

## **EUROPE: A PRIORITY!**

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# I Introduction

The Advisory Council on International Affairs (AIV) prepared this advisory report on its own initiative. The aim is to make a tangible contribution to the formulation of Dutch EU policy following the parliamentary elections on 22 November 2006. In particular, the AIV wishes to contribute to the debate on the political prioritisation of the European Union's tasks and the necessary reform of the European institutions, in order to enable the Union to properly perform the tasks it has been set.

In doing so, the AIV has thus framed this report in accordance with the Dutch approach following the negative outcome of the referendum on the Treaty establishing a Constitution for Europe<sup>1</sup> in the run-up to the meetings of the European Council in 2007. The *Speech from the Throne 2006* states: 'To safeguard our security and prosperity, to protect the environment and our long-term energy supplies, we need our fellow Europeans. These tasks take precedence over the debate on the structure of the Union.'<sup>2</sup> *The State of the European Union 2006-2007* also conveys this view.<sup>3</sup> The period of reflection announced by the European Council has been extended by one year until June 2007.<sup>4</sup> Among other things, the AIV will examine the desirability of this approach in the present advisory report.

In practice, the situation following the referendum is now as follows. The European Commission has continued its initiative to improve the dialogue on Europe.<sup>5</sup> In the Netherlands, a number of studies on the wishes of the Dutch public have been

- 1 This Treaty, which is also referred to as the Constitutional Treaty, was signed in Rome on 29 October 2004 by all the heads of state and government of the EU member states and the candidate countries. It was published on 16 December 2004 in the *Official Journal of the European Union* (C series, no. 320). It can only enter into force following ratification by all member states (Article IV-447(2)). If four-fifths of the member states have ratified the Treaty two years after signing it, and one-fifth or more have encountered difficulties in doing so, the matter will be referred to the European Council (Article IV-443(4)). The Netherlands and France decided not to ratify the Treaty, fifteen member states have ratified it, one has started the ratification process and seven have yet to do so.
- 2 *Speech from the Throne 2006*, Government Gazette no. 182, Tuesday 19 September 2006.
- 3 *State of the European Union 2006-2007*, Parliamentary Paper 99 670, no. 1, Sdu Publishers, The Hague, 2006, pp. 5-7. See also *Dutch government memorandum: Analysis of the period of reflection on the rejection of the Treaty establishing a Constitution for Europe*, Parliamentary Paper 30 303, no. 20, 19 May 2006.
- 4 European Council, *Presidency Conclusions*, 10633/06, Brussels, 16 June 2006, para. 47. See also *Kamerbrief Verslag Europese Raad 15-16 juni 2006* (Letter to Parliament reporting on the European Council meeting of 15-16 June 2006), DIE-948/06, 20 June 2006.
- 5 Communication from the Commission, *The Commission's contribution to the period of reflection and beyond: Plan-D for Democracy, Dialogue and Debate*, COM (2005) 494 final. See also *Kamerbrief inzake Nederland in de Europese bezinningsperiode en verder* (Letter to Parliament on the Netherlands in the period of reflection on the future of the European Union and beyond), DIE-756/05, Parliamentary Paper 30 303, no. 18, 7 November 2005.

published. The government has issued a report on an internet survey completed by over 100,000 people.<sup>6</sup> In addition, Part A of the annexe to the *State of the European Union 2006-2007* devotes detailed attention to developments in public opinion concerning Europe.<sup>7</sup>

The AIV notes that there is broad support in the European Union for the view that the best way to rebuild confidence in European integration is to achieve tangible policy results by means of EU projects that directly tackle the concerns and problems of European citizens. In this context, the AIV refers to the European Commission document entitled *A Citizens' Agenda: Delivering Results for Europe*.<sup>8</sup> The basic premise of this document is that European citizens wish to see *more* action by the EU in certain areas. Examples of this include creating employment, managing globalisation, combating terrorism and organised crime and promoting sustainable development and solidarity.<sup>9</sup>

The AIV agrees with this approach. For the most part, the present report reflects the view that priority should be given to closing the gap between citizens' expectations of the European Union and the Union's actual policy results, which fall short of these expectations. Nevertheless, the AIV wishes to make three comments regarding this approach.

The first comment is that the European Union requires a solid financial foundation. The AIV notes that for many people the debate on the funding of the Union narrows down to the question of whether the Netherlands pays too much in comparison to other countries. The AIV emphatically takes the position that a structural improvement of the European Union's financial foundation is vital if the Union wishes to successfully perform the tasks it has been set. This issue is examined in chapter II.

The second comment is that any intensification of EU action in the above-mentioned areas should be accompanied by the appropriate institutional apparatus. The debate on the European Union's priority tasks should go hand in hand with the debate on institutional reform.

The third comment is that this institutional apparatus requires greater 'input legitimacy'. In terms of citizens and their involvement in European cooperation, it is important to distinguish between the input and output legitimacy of public administration.<sup>10</sup> The first

6 *The Netherlands and Europe: from Dream to Action*, Ministry of Foreign Affairs, 19 May 2006. The study comprises a quantitative part and a qualitative part. The results were adjusted to increase their representativeness. In total, 128,059 people completed the survey.

7 *European Times*, annexe to the *State of the European Union 2006-2007*, Sdu Publishers, The Hague, 2006, pp. 5-43.

8 Communication from the Commission, *A Citizens' Agenda: Delivering Results for Europe*, COM (2006) 211 final, 10 May 2006.

9 *Ibid.*, at p. 2.

10 A. van Staden, *The Right to Govern: The Democratic Legitimacy of the European Union*, Clingendael Institute, November 2003.

form of legitimacy exists if and to the extent that citizens feel they are part of the decision-making process, are properly represented in this process and have genuine opportunities to influence it themselves. The second form concerns the outcome of the process: the legitimacy that develops if the policies implemented actually solve social problems. Both forms of legitimacy are essential for securing public confidence.

The AIV concludes from the above that Dutch policy should focus not only on narrowing the delivery gap but also on expanding the opportunities for citizens to determine the course of European policy both directly and indirectly. The AIV emphasises that the present advisory report should be seen as a follow-up to the advisory letter *The European Union and its relations with Dutch citizens*, which was published on 13 December 2005.<sup>11</sup> Whereas the key question in the advisory letter was how to improve citizens' involvement in and sense of solidarity with the European Union, the present report focuses chiefly on what the European Union needs to do and what instruments it needs for this purpose.

In most cases, this will require amendments to the Treaty of Nice. Experience teaches that these will take a long time to achieve. The AIV therefore also provides a number of guidelines for measures that could improve the current situation in advance of a revision of the treaty.

The above discussion leads to the following questions:

1. What improvements are needed with regard to EU funding?
2. What do Dutch citizens expect from the European Union?
3. What tasks should the European Union take on as a matter of priority in the interests of the Netherlands and with the support of the Dutch population?
4. Do existing instruments enable the European Union to perform these tasks properly?
  - a. What treaty amendments would increase the European Union's effectiveness and the public support it receives? Which amendments should be given priority so that they can enter into force in 2009 (the year of the next European elections and the formation of a new European Commission)?
  - b. What improvements can be implemented now in advance of any treaty amendments?

This report was prepared by the AIV's European Integration Committee (CEI). Its members were: Professor F.H.J.J. Andriessen (chair), Professor A. van Staden (vice-chair), Professor J.W. de Beus, Professor M.G.W. den Boer, H.J. Brouwer, Dr M. Bulk, Dr W.F. van Eekelen, E. Jansen, Professor P.J.G. Kapteyn, Ms N.W. Meuter-Dijkers, H.C. Posthumus Meyjes, W.L.E. Quaedvlieg, Professor J.Q.T. Rood, Professor A. Szász, F.A.H. Vigeveno, Ms M.G. Wezenbeek-Geuke and Professor J.W. de Zwaan, supplemented by Dr P.C. Plooi-van Gorsel (AIV) and E.P. Wellenstein of the AIV's Peace and Security Committee (CVV). The committee was assisted by Dr S. Volbeda (executive secretary) and B. Groothuis, Ms M. Kersten and Ms E. van der Bijl (trainees). The civil service liaison officer was A.P. den Hartog of the Internal Affairs Division of the Ministry of Foreign Affairs' European Integration Department (DIE/IN).

As part of the preparations for this report, the CEI held a roundtable discussion with a number of external experts on 19 May 2006. Professor J.L.M. Pelkmans (Director of

<sup>11</sup> Parliamentary Paper 30 300 V, no. 88.

Economic Studies, College of Europe, Bruges) and T.J.A.M. de Bruijn (Permanent Representative of the Netherlands to the European Union) provided an introduction to the issues under discussion.

The AIV has recently published various advisory reports in which certain aspects of the issues covered in the present report are discussed in a different or similar context. Where relevant, the AIV refers to these reports.

The AIV adopted this report on 3 November 2006.



## II Healthy finances

### II.1 Introduction

'Is the Union too expensive?' is one of the questions that occupy many people.<sup>12</sup> The European Union's annual budget is approximately €105 billion (2005), or around 1% of the combined gross national income (GNI) of the member states.<sup>13</sup> The tasks obviously differ greatly, but the EU budget is significantly smaller than that of a member state like the Netherlands, for example, and as a percentage of GNI amounts to only a fraction of the collective expenditure of the member states, which runs to several dozen per cent of their GNI.<sup>14</sup> When this data is compared to the economic and commercial value of EU membership, the AIV concludes that Europe is not too expensive. Chapter IV examines the economic and commercial value of the European Union in greater detail.

The issue of EU funding constantly leads to serious friction, even at the level of heads of government. In the Netherlands, the meaning of EU membership often appears to be narrowed down to the country's net contribution and the costs associated with the multiple meeting places of the European Parliament. In the following sections, the AIV therefore examines the European Union's financial basis in greater detail.

### II.2 The revenue side of the EU budget

The European Union's own resources have been an issue since the adoption of the Treaty of Rome. The European Economic Community (EEC) started with an allocation formula for member state contributions, but aimed to replace them with its own resources, in particular revenue from the Common Customs Tariff.<sup>15</sup> In 1970, acting on a proposal from the Commission and after consulting the European Parliament, the Council unanimously adopted its first decision in this regard, which then still needed to be ratified by all the member states. The procedure remains the same to this day.

It was obvious that, in addition to customs duties, the subsequent agricultural levies on imports, which by their nature are also a pure Community instrument, should be regarded as own resources. Where necessary, these resources were to be supplemented up to a maximum of 1% of VAT. For most member states, this represented a new form of indirect taxation, of which certain features, such as the tax base, had already been harmonised. The intention was that this instrument would decouple EEC finances from the member states' budgets. Fifty years later, not one

<sup>12</sup> This question clearly played a role in the citizens' initiative rejected by France to end the practice whereby the European Parliament meets in Strasbourg as well as in Brussels.

<sup>13</sup> European Court of Auditors, *Annual Report concerning the financial year 2005*, Annex 1, Financial information on the institutions of the European Union, October 2006.

<sup>14</sup> For further details, see *State of the European Union 2006-2007*, p. 13; Netherlands Court of Audit, *Accounting for central government 2005*, section 2.2; Ministry of Finance, *National Financial Annual Report 2005*, Parliamentary Paper 30 550, no. 2, 17 May 2006.

<sup>15</sup> Article 201 of the EEC Treaty (now Article 269 of the EC Treaty).

aspect of this still applicable treaty objective has been realised. On the contrary, it has moved further and further out of reach.

The origin of the failure of the European Union's system of own resources lies in the ill-considered solution accepted at the European Council in 1984 at the unrelenting insistence of the United Kingdom. At the time, the United Kingdom was one of the less prosperous member states and undeniably derived little benefit from agricultural expenditure, which then accounted for 80% of the total EEC budget. Instead of a new and fairer system, the United Kingdom was arbitrarily granted a permanent rebate of 66% on its net contribution. The other member states have to pay for this rebate collectively. The principle of the net contribution set a precedent that continues to have an impact to this day. More serious still was the fact that the Community subsequently took no account of substantial changes in its patterns of expenditure, which increasingly goes to the regional, structural and cohesion funds, while the United Kingdom has meanwhile become one of the most prosperous member states.

Since then, there have been several *ad hoc* changes to the system of own resources. In 1999, for example, certain major contributors were exempted from contributing towards the British rebate at the expense of other member states. Following the introduction of the cohesion funds in Edinburgh in 1992 and the rationalisation of dairy policy, the Netherlands went from being a comfortable net recipient to a net contributor. The Netherlands subsequently stipulated that, instead of 10% in collection costs,<sup>16</sup> which member states have been allowed to deduct from the customs duties and agricultural levies they collect since 1970, it would henceforth deduct 25%, especially since the port of Rotterdam accounted for a relatively large share of revenue from customs duties. In London, at the end of 2005, the Netherlands tried – without success – to increase this percentage even further. Belgium understandably opposed this, as it felt it should then be entitled to a similar percentage for the port of Antwerp. In the final compromise, the Netherlands nevertheless obtained a reduction in the contribution that is calculated as a proportion of the GNI of the member states. This has led to a situation in which every element of EU funding can be changed on an *ad hoc* basis according to net positions.

All these changes mean that the own resources system has effectively ceased to exist. In addition, the lion's share of EU revenue now comes from the GNI component: approximately 70% of the EU budget comes from regular budget contributions or 'transfers'. When political compromises are concluded in the form of round numbers and without itemisation, moreover, the original budget calculations lose their meaning. As a result, the member states adopted an incoherent dossier for the next seven years, until the new Financial Perspectives are determined in 2013. However, a review of the European Union's financial situation is already scheduled for 2008. It is not clear exactly what this review implies, which means that it could be of great significance or of no significance at all, and it consequently carries a potential for new conflicts.

As the Netherlands discovered after its triumphant success at the 1999 Berlin summit, where it obtained €1.3 billion in reductions per year, things can change rapidly in the field of European finances. When the European Union's patterns of expenditure change, the rules on EU resources do not, and this consequently impacts on the various net positions.

<sup>16</sup> These are administrative and collection costs.

### **II.3 The expenditure side of the EU budget**

The European Union's expenditure is governed by the Financial Perspectives, which are adopted for seven-year periods and also require the approval of the European Parliament. They are entirely unrelated to the own resources decisions. However, due to the links between the two issues, own resources decisions appear on the agenda whenever it is time to adopt new Financial Perspectives, as occurred most recently at the London European Council of December 2005.

The Financial Perspectives for 2007-2013, which were adopted with so much difficulty, do not constitute commitments or even authorisations for EU expenditure. In practice, these authorisations are contained in the annual EU budgets and can only lead to actual expenditure on the basis of underlying legislation. On closer examination, the Financial Perspectives thus merely constitute budget ceilings for each category of expenditure. Incidentally, the EU budget is the only 'state' budget in the world in which expenditure dictates revenues, as on balance there can be neither a deficit nor a surplus. Whatever is left over is returned to the member states, and deficits must be covered with own resources. The net positions of the member states will continue to shift if they hold on to the current system, which in reality is based on national budget contributions. This will potentially keep causing new conflicts.

With all the discord concerning the Constitutional Treaty and so soon after the heated discussions on the Financial Perspectives for 2007-2013, the AIV believes that now is not the time to advocate a new funding system based on European taxes. It would be better to keep this issue on the political back burner for a while. To prevent future impasses and political damage, however, a further examination of this issue by an authoritative panel of experts from the member states is urgently required.

#### *Recommendations 1 and 2*

*The AIV believes that the transfer of resources to the European Union should be fundamentally separate from national budgets. Only then will it be possible to discuss the implementation of EU policy, including the allocation of resources, without reference to constantly shifting interests regarding the revenue side of the EU budget.*

*The European Council should instruct an authoritative panel of experts from the member states to come up with an appropriate own resources system for the European Union that is independent of national budgets. This should take place as soon as possible, namely before 2008, when the aforementioned financial review will be on the Council's agenda.*

## III Citizens

### III.1 Public opinion

The referendum on the Constitution for Europe of 1 June 2005 revealed that there was widespread scepticism about European integration in the Netherlands. For several decades, the majority of the population had held a positive or neutral opinion on Europe. This allowed Dutch politicians to pursue their European policy at a relative distance from the public. They developed this policy with the help of officials, interested parties and experts, but with little involvement from citizens. In addition to informed criticism, Dutch euroscepticism also comprised a mixture of reluctance, suspicion, protest and ignorance. A majority of the population had become opposed to Europe, at least the Europe envisaged in the Constitutional Treaty. At the same time, however, the voters announced that they were not opposed to continued European cooperation, although it was unclear how this would take shape.

Especially since the revolutions of 1989, which brought an end to the Cold War, there have been many changes in Europe. These include, for example, the further liberalisation of the European market, the introduction of the second pillar for the Common Foreign and Security Policy (CFSP) and the third pillar for policy in the field of Justice and Home Affairs (JHA), monetary union and the introduction of the euro, and an ambitious enlargement involving the accession of ten countries on 1 May 2004. These changes, which were accompanied by a series of treaty revisions, provided the impetus for the Laeken Declaration<sup>17</sup> and the establishment of the European Convention<sup>18</sup> to reform the EU's institutions and streamline decision-making.

It has now emerged from various opinion polls<sup>19</sup> that the complaints and concerns of Dutch citizens with regard to Europe are changeable and fickle. The first samples paint a picture of public pessimism and gloom about economic development. In contrast, the

17 The Laeken European Council of 15 December 2001 adopted a Declaration on the future of the European Union, also known as the Laeken Declaration, in which the Union committed itself to becoming more democratic, transparent and efficient. The declaration lists some sixty issues in connection with the Union's future, grouped round the following four themes: the division and definition of competences, the simplification of the Union's instruments, the institutional framework and the path towards a Constitution for European citizens. In order to discuss these issues and examine the possibilities, the Declaration provided for the convening of a Convention on the future of Europe.

18 In accordance with the Laeken Declaration, the European Convention focused chiefly on four issues: the division of competences, the simplification of the treaties, the role of national parliaments and the status of the Charter of Fundamental Rights. The Convention concluded its activities on 10 July 2003, after reaching agreement on a proposal for a European Constitution. On 18 June 2004, the Intergovernmental Conference, meeting at the level of heads of state and government, reached agreement on the draft Constitution prepared by the Convention: the Treaty establishing a Constitution for Europe.

19 Anker Solutions, *NederlandinEuropa.nl* (TheNetherlandsinEurope.nl), Amsterdam, May 2006; Jos de Beus, *Het grote Europese gedrang* (The great European throng), VDE-Europa lecture 2006, Amsterdam, April 2006; Kees Aarts and Henk van der Kolk (eds.), *Nederlanders in Europa* (The Dutch in Europe),

footnote 19 cont. on p. 13 ►

Eurobarometer survey from the summer of 2006 shows a surge in optimism in the Netherlands with regard to national and European politics, which appears to be connected to the recovery of consumer and producer confidence.<sup>20</sup> In summary, it is clear that people believe European policy should fulfil a number of conditions and that it is important to address these conditions if this policy is to gain enough support. The conditions are:

- participation in the European Union should leave enough national policy latitude on matters relating to Dutch freedoms, rights and customs;
- a new treaty should help to make European politics more democratic;
- the euro and Economic and Monetary Union (EMU) should develop and function such as to make lasting improvements to Dutch and European competitiveness in the new global economy;
- European economic policy should impose certain limits on shareholder capitalism and the polarisation of income and wealth distribution, while respecting Dutch social benefits and public goods;
- further EU enlargement should not come at the expense of the European Union's achievements and coherence; and
- the Dutch financial contribution to the European Union should be in reasonable proportion to that of other countries.

### **III.2 The response of the Dutch government and parliament**

After the referendum, the Dutch government responded as follows.

1. Monitoring: the government plans to regularly gauge public opinion and to feed the results into foreign and European policy.<sup>21</sup>
2. Education: in accordance with the AIV's recommendation of December 2005, the government noted in a letter to Parliament that more attention will be devoted to Europe in schools.<sup>22</sup>
3. Reflection: the government plans to take a long-term approach to future treaty revisions in order to take account of important political developments in neighbouring countries, such as the French presidential elections in 2007.
4. Subsidiarity test: the House of Representatives and the Senate have decided (a) to

*footnote 19 cont. from p. 12 ▶*

Bert Bakker, Amsterdam, 2005; Anker Solutions, *Kom maar naar de camping! Tijd voor een reality check* (Come to the campsite! Time for a reality check), Amsterdam, September 2005; Netherlands Bureau for Economic Policy Analysis/Social and Cultural Planning Office of the Netherlands, *Europese tijden* (European times), The Hague, September 2005 (annexe to the *State of the European Union 2005-2006*); Hans Vollaard and Bartho Boer (eds.), *Eurosceptis in Nederland* (Euroscepticism in the Netherlands), Lemma, Utrecht, 2005; European Commission, *The European Constitution: post-referendum survey in the Netherlands*, 2005.

<sup>20</sup> Simon Kuper, 'Holland's Crowded House', *Financial Times*, Weekend, 26-27 August 2006. Kuper refers to European Commission, *Eurobarometer 65: The Netherlands*, Brussels, June 2006.

<sup>21</sup> Atzo Nicolai, *The Netherlands and Europe: from Dream to Action*, Ministry of Foreign Affairs, The Hague, 19 May 2006.

<sup>22</sup> Policy memorandum on the issue of Europe in Dutch education, Letter to Parliament from the Ministry of Education, Culture and Science and the Ministry of Foreign Affairs, 7 September 2006, Parliamentary Paper 30 303, no. A, Senate, KST100769.

- examine new initiatives from the European Commission and/or the European Council from a Dutch perspective and to evaluate their subsidiarity, expediency, proportionality and feasibility promptly and systematically; and (b) to supplement coordination with European bodies by cooperating with other member states at governmental and ministerial and at parliamentary and party-political level. Importantly, this will also kick-start the politicisation process (see also point 6).
5. Business-based and result-oriented improvement of European economic policy: the national interest is served by effective European policy in such areas as trade agreements, regulating competition, enhancing the internal market, protecting the environment and consumers and, last but not least, promoting education and research on global competition and progress.
  6. Politicisation: the government aims to make the defence of Dutch interests in the political arena more visible to the public.

The AIV believes that the government is not adequately addressing the public's actual concerns, as many people still support European cooperation, even in a number of areas where it is currently still inadequate. In the AIV's opinion, acknowledging that citizens expect concrete results means that the European Union should be structured such that it can produce such results. In cases where citizens do not – or no longer – adequately understand the need for certain changes, as a result of the aforementioned remoteness of European policy, governments will have to explain this need to them so that they will agree to the changes. The AIV accordingly believes that, in addition to the government's above-mentioned response, more attention needs to be devoted at the very least to the following aspects of European integration: the European Union's tasks, its structure and enlargement.

According to the AIV, the government needs to develop a well-reasoned and recognisable policy that strikes a balance between international involvement and national support in these three areas in the immediate future.

### **III.3 Tasks, structure of governance and enlargement**

#### *Tasks*

Whether the Union should aspire to a larger or smaller range of tasks is one of the points of contention in the national and international debate. Research<sup>23</sup> indicates that Dutch citizens are very dissatisfied with the European Union but nevertheless expect it to act on key matters, such as security, coordinated action in international crises, employment and social protection. This means that European cooperation is called for in such areas as counterterrorism, asylum and migration, foreign and defence policy and energy policy. However, research also indicates that this support is couched in general terms, is conditional and is subject to reluctance to transfer national competences.

In the interests of the public, the government should always be able to provide satisfactory answers to the following questions when faced with concrete proposals for tackling new issues at EU level. Is a Dutch interest or priority at stake? Is the current level of European cooperation unsatisfactory? Do the other member states support the proposal? Has it been developed in terms of governance (with due regard for the requirements of expediency, proportionality and subsidiarity)? Will a new measure

23 See footnote 19.

improve matters for the Netherlands, and will this be swiftly apparent or only much later? Does the proposal exceed the European Union's existing tasks and financial scope? And, finally, can the Union handle this expansion of its tasks?

#### *Structure of governance*

The AIV believes that one of the lessons of the referendum is that the Dutch people's support for EU membership, which remains strong, is needlessly tested by having the European Union announce initiatives (such as the European knowledge economy or the European social model) without giving it the tools to implement them.<sup>24</sup> The AIV accordingly disagrees with the government<sup>25</sup> that safeguarding our security and prosperity and protecting the environment and our long-term energy supply should have priority over the debate on improving the institutional structure of the Union. One cannot exist without the other.

#### *Recommendation 3*

*The structure of governance needs to be streamlined to increase the Union's effectiveness. Only then will the aforementioned actions have any chance of success. New policy initiatives and improvement of the Union's structure should therefore go hand in hand.*

The current Dutch electoral manifestos point to the cautious emergence of a consensus on the Union's functioning.<sup>26</sup> Thus, for example, all parties state that they want to abolish the unanimity rule or at any rate that they want to significantly expand decision-making by qualified majority rather than by unanimity. In the foreign policy field (the second pillar), they want more decision-making by qualified majority where possible but wish to maintain unanimity in the case of defence policy. In addition, most parties believe that the European Parliament should have a greater say. All parties are in favour of applying the subsidiarity test and devoting serious attention to the distribution of tasks between the EU and the member states in order to prevent unnecessary interference in national affairs. Nevertheless, most parties actually want closer European cooperation in the areas of Justice and Home Affairs (JHA), asylum and migration, security and energy. Many are also in favour of reforming the Union's finances, albeit in different ways. Finally, almost all parties agree on the need to improve the functioning of the internal market and EMU and to increase cooperation at European level in order to strengthen the Union's international competitiveness.

Civil society organisations, in particular the Confederation of Netherlands Industry and Employers (VNO-NCW), have declared that better legislation must be an 'absolute

24 The President of the Commission shares this view. See his lecture in London on 16 October 2006 (Hugo Young Lecture, Speech 06/602) and his conversation with the French Prime Minister (Speaking Points 20060925).

25 See *Speech from the Throne 2006*, Government Gazette no. 182, Tuesday 19 September 2006.

26 See the electoral manifestos for the 2006 parliamentary elections. See also Wilmer Heck and Michèle de Waard, 'Nederland trekt zich niet op de terpen terug. Politieke partijen zijn kater na het 'nee' tegen de Europese Grondwet te boven' (The Netherlands is not retreating to the *terpen*. Political parties have recovered from their hangovers after the 'no' vote against the European Constitution), *NRC Handelsblad*, 24 August 2006.

priority' in European decision-making.<sup>27</sup> VNO-NCW argues that it is essential to strengthen popular support for the European Union and that Dutch EU policy should be limited to issues of a clearly transnational nature, such as macroeconomic policy, the completion of the internal market, reforms in support of growth and employment, combating protectionism and Dutch positions on global issues.

#### *Enlargement*

With regard to enlargement, the AIV has previously published advisory reports on Turkey and the European Union's eastern neighbours.<sup>28</sup> The European Union needs to conduct an ongoing dialogue regarding the accession of candidate countries with its own citizens, on existing and future commitments, and with the candidate countries themselves, on how they plan to meet the criteria that have been imposed. This is no simple task, even in the long term, as it involves both adapting economic structures to the free market and adopting the *acquis communautaire*, democracy, the rule of law and European values.

In practice, institutionalising all these changes has proved to be a major stumbling block. This is not surprising, as it involves a process of fundamental change. In this context, the AIV advocates examining the options for differentiated membership, which in practice has existed for some time. One example is the Schengen Agreement, which brings together many EU member states but also countries from outside the European Union. Similarly, not all EU member states are members of EMU, and the ten countries that acceded to the Union in 2004 will join EMU individually as soon as each of them is ready.<sup>29</sup> In the accession negotiations with Turkey, moreover, the parties are discussing excluding the free movement of workers, which in practice amounts to a modified form of membership.

Without being official members of the European Union, Norway, Iceland and Liechtenstein participate in the internal market as members of the European Economic Area (EEA). They accordingly have a certain – albeit indirect and limited – influence on the adoption of relevant rules.<sup>30</sup>

It has also been suggested, for example, that aspiring member states could initially be granted affiliate membership<sup>31</sup> or that they could accede to the European Union in

27 VNO-NCW, *Rondje Europa, actuele onderwerpen in het kader van het Finse voorzitterschap van de Europese Unie (1 juli 2006-1 januari 2007)* (Europe in a nutshell: topical issues during the Finnish presidency of the European Union (1 July-31 December 2006)). See section 1.4: 'Wat dient de agenda voor de toekomst te zijn?' (What should the agenda for the future be?), pp. 9-10.

28 AIV advisory report no. 44, *The European Union's new eastern neighbours*, July 2005; AIV advisory report no. 37, *Turkey: towards membership of the European Union (Follow-up Report) and Addendum: The position of the European Union on Turkey from 1959 to June 2004*, July 2004. See also the government's response to AIV advisory report no. 44, *The European Union's new eastern neighbours*, 8 November 2005.

29 Slovenia will be the next member state to join EMU on 1 January 2007.

30 This is sometimes referred to as decision-shaping rather than decision-making.

31 F.H.J.J. Andriessen, 'Naar een Continentale Unie: keerpunt?' (Towards a continental Union: turning point?), Dr Sicco L. Mansholt lecture, Dutch Section of the Association of European Journalists, 15 May 1996.



phases.<sup>32</sup> Under such circumstances, a country would initially be granted 'limited' membership: first in the field of CFSP/ESDP,<sup>33</sup> then in the field of JHA and only then of the internal market and all related economic, social and political policy areas. A different order is also conceivable. It is important to affirm that countries that comply with all the conditions imposed on them will ultimately become full members of the European Union, with all promises made in the past being honoured.

The AIV notes that in practice different forms of membership already exist and that it should be possible to discuss this more openly in respect of countries aspiring to EU membership. By extension, the European Union should be able to discuss the possibility of participation in specific policy areas more openly with neighbouring countries.

In this context, further attention should also be devoted to 'enhanced cooperation', as referred to in the Treaty of Nice, which can be initiated by as few as eight of the 25 member states (see also section V.2, recommendation 15, and section VI.4, recommendation 28).

#### *Recommendation 4*

*The AIV notes that, in view of the diversity of the member states aspiring to EU membership, the possibility of different forms of membership is being rejected too easily and too soon. A debate on this issue would be a good complement to the European Neighbourhood Policy, which currently rejects all forms of membership.*<sup>34</sup>

### **III.4 Involving citizens in Europe**

The AIV is disappointed that Europe is not receiving the priority it deserves in the election campaign. Now that such fundamental differences of opinion regarding the future of Europe have come to light, the AIV believes that political leaders should secure a clearer mandate from the electorate concerning the further development of European integration. The fact that the significance of Europe is not a clear priority can only have a negative impact on the actions of government and parliament during the forthcoming – and crucial – period. Besides the political agendas of several member states (including France), the expected initiatives of the German EU presidency from January 2007 and the forthcoming review of the Union's financial structure both highlight the need for the Netherlands to adopt a definite position.<sup>35</sup> Even if the aforementioned issues are not a political priority during the election campaign, the

32 J. de Zwaan, *Trapsgevijs toetreden (Phased accession)*, *Internationale Spectator*, no. 6, June 2006, pp. 289-290.

33 One example is the practice of the Western European Union (WEU) whereby countries are given a seat at the negotiating table in advance of membership.

34 AIV advisory report no. 44, *The European Union's new eastern neighbours*, July 2005.

35 Without wishing to emulate a particular foreign example, the AIV notes that Europe's fate is playing an important role in the French presidential election campaign. This applies not so much to the specific viewpoints adopted by the leading contenders as to the fact that it is apparently 'indispensable' to adopt some viewpoint on France's position for the benefit of French voters. Does the same not hold true for the Dutch electorate?

programmes of most political parties nevertheless justify the adoption of such priorities by the relevant parliamentary parties. Given the public's need for clarity and perspective, the AIV believes it is very important that this need to adopt a clear position is duly taken into account when the next government is being formed.

*Recommendation 5*

*The debate on the future of Europe should be much more politicised than it is at present. This applies not only to the introduction by parliament of the subsidiarity test but also to making the future direction and development of European integration a central feature of the forthcoming government programme.*

The AIV believes that the legitimacy of the decision-making process should be increased by giving citizens better ways of expressing their approval of or opposition to a certain course of action and ensuring that these views have an impact on subsequent decision-making.

In previous advisory reports, the AIV has referred to the importance of creating European political parties in raising the profile of European politics.<sup>36</sup> In this context, it mentioned and supported the proposals of the European Parliament to elect part of the Parliament via European lists in the 2009 elections. Since its entry into force, moreover, the Treaty of Nice has provided for the funding of European political parties. In the AIV's opinion, more use should be made of this option to raise the profile of European parties.

In addition, the leaders of the main European political parties should be willing to stand for the presidency of the European Commission.<sup>37</sup> All these factors should result in genuine European parties campaigning in European elections, with the voters in practice electing the new president of the European Commission.

During the formation of the European Commission, the member states and the Commission president could strive to ensure that the political affiliation of its members reflects the results of the European elections.

The European Parliament could ensure that the Commission's work programme also takes account of the results of European elections. The EP's right to request the Commission to submit proposals (Article 192 of the EC Treaty) would be suitable for this purpose, although it should be noted that the Parliament has so far made little use of this right.<sup>38</sup>

36 See AIV advisory report no. 12, *The IGC 2000 and beyond: towards a European Union of 30 member states*, January 2000, pp. 18-19 and 27-28; and AIV advisory report no. 5, *An inclusive Europe II*, November 1998, pp. 26-28.

37 Also recommended in AIV advisory report no. 12, *The IGC 2000 and beyond: towards a European Union of 30 member states*, January 2000, pp. 7 and 19, and in AIV advisory report no. 5, *An inclusive Europe II*, November 1998, p. 25.

38 The AIV made a similar recommendation in advisory report no. 12, *The IGC 2000 and beyond: towards a European Union of 30 member states*, January 2000, p. 27.

## IV Priorities in existing policies

### IV.1 Introduction

It is inevitable that the development and potential expansion of the European Union's range of tasks comes at the expense of national policy freedom. A certain discontent in this regard is clearly apparent from the preceding analysis of citizens' perceptions.

The AIV believes it is necessary to critically examine whether – and if so to what extent – past transfers of competences took account of the resulting limitation of national policy freedom. Such an exhaustive task is beyond the scope of this report, but the European Commission is now consistently evaluating this issue. The present chapter merely examines whether this point was taken into account sufficiently in relation to several aspects of existing policy that are of vital importance for promoting Dutch and supranational interests at European level.

The costs and benefits of elevating policy issues to European level are compared below. The loss of national competences is regarded as a cost, because the European Union pursues one policy for all member states, thereby limiting national policy freedom. This makes it harder for member states to take account of national circumstances, such as different levels of economic development and varying preferences (e.g. concerning social security). On the other hand there are benefits, such as the growing impact of policy beyond national borders, increased efficiency, cost savings, greater availability, more choices and a level playing field for competition.

The main questions are what Dutch citizens expect from the European Union and what tasks the Union should take on as a matter of priority in terms of Dutch interests.

In the AIV's opinion, the European Union should at the very least – and forcefully – take on the following tasks in the coming period:

- completing the internal market;
- completing EMU;
- improving international competitiveness;
- developing the CFSP;
- regulating immigration;
- maintaining internal and external security;
- securing the energy supply; and
- improving the Union's institutional structure.

This chapter examines the first three tasks, which are part of existing EU policy but require explicit attention. Chapter 5 then examines three new policy priorities for the European Union, which involve the intensification of existing policies (regulating immigration and maintaining internal and external security) as well as a new EU policy area (securing the energy supply). The AIV does not examine the CFSP but refers to previous advisory reports on the subject.<sup>39</sup> However, the CFSP is discussed indirectly in section V.1 on asylum and migration policy.

<sup>39</sup> See, *inter alia*, AIV advisory report no. 27, *Bridging the gap between citizens and Brussels: towards greater legitimacy and effectiveness for the European Union*, May 2002, p. 34; and AIV advisory report no. 32, *Follow-up report, Bridging the gap between citizens and Brussels: towards greater legitimacy and effectiveness for the European Union*, April 2003.

Chapter VI addresses the improvement of the Union's institutional structure. It specifically examines treaty revisions and what can be achieved pending such revisions without amending the existing treaties.

Before discussing three new policy priorities in chapter 5, the AIV wishes to emphasise that existing policies also require constant action. Thus, for example, the importance of completing the internal market and EMU in improving the international competitiveness of the European Union and the Netherlands should not be underestimated. The public believe the EU has an important task in this regard.

## **IV.2 The internal market and socioeconomic values**

Completing the internal market remains of vital importance for the economy and the business sector. It offers direct advantages to citizens, such as a wide choice of goods and services and a high level of consumer protection, which is important to the effective functioning of the internal market. Recent key achievements of this interplay include the adoption of a single standard for GSM and television channels and reductions, for example, in the price of airline tickets and telecommunications.

Working to complete the internal market includes promoting European values, which produce a different social and economic model than that of the United States, for example. Citizens attach great importance to this, since it provides the foundations for sustainable economic growth.

The widely supported values of the European Union, such as peace and security based on freedom and democracy, ensure that citizens have room to exercise economic, social, civil and political rights and freedoms. Citizens attach great importance to these achievements of Social Europe, which stands for solidarity, sustainability and human dignity. These values form the foundation for respect for human rights and the protection of personal freedom.

These values should be propagated not only externally but also to Europe's own citizens. At this point in time, which is marked by a sharp increase in the diversity of citizens, the European Union needs to conduct a permanent dialogue on this issue with the different groups and nationalities residing within its borders. It is particularly important to strengthen Europe's identity to combat widespread indifference and ignorance.<sup>40</sup> To this end, both European and national measures should specify how they are connected to the values mentioned above.

### *Recommendation 6*

*In the AIV's view, the European Union should promote widely supported values such as peace, security, freedom and democracy more explicitly in its policies and explain the need for a Social Europe.*

Through its far-reaching economic integration, Europe has contributed significantly to the post-war rise in prosperity. It has been calculated that the effect of integration in

40 A. van Staden, *The Right to Govern: The Democratic Legitimacy of the European Union*, Clingendael Institute, November 2003.

promoting trade alone has accounted for a 10% rise in national income.<sup>41</sup> This is even greater when other positive effects are included, such as increased competitiveness as a result of European competition rules and greater efficiency due to the introduction of the euro and the integration of the financial sector.

At the same time, the economic integration of Europe is still far from complete, and cross-border economic traffic is still hampered by national barriers, such as differences in national permits, technical legislation and national monopolies. This applies, for example, to the service sector – the Cinderella of the internal market – while the energy sector has also only just started to transform itself into a market. Further integration in the service sector is running into widespread resistance in almost all member states, yet services account for more than 70% of the European Union's GNI. Commercial services account for roughly half of this, and it is primarily in this area that employment growth is being achieved.

#### *Recommendation 7*

*Given the importance of economic growth, the AIV advises the government to mount a targeted publicity campaign to highlight the economic significance of further services liberalisation.*

### **IV.3 Economic and Monetary Union**

The compliance of the participating countries with their obligations under EMU is clearly in need of improvement. To this end, it is very important that the Stability and Growth Pact, as amended, which is meant to keep the EMU countries up to the mark in budgetary matters, continues to apply in full.<sup>42</sup> It is also vital to consolidate matters from a budgetary perspective when the economic climate is favourable.

The AIV sees that international comparisons between member states have a disciplinary effect, but believes that it is necessary to improve the effectiveness with which existing commitments can be enforced in order to maintain monetary stability in the long run. This would also increase public support for European integration. Section VI.5 examines the functioning of the open coordination method in greater detail (see also recommendation 32).

#### *Recommendation 8*

*The AIV points out the importance of supporting the common currency by means of effective policies to supplement the completion of the internal market.*

41 Netherlands Bureau for Economic Policy Analysis (CPB), *Macro-economische verkenningen 2006, Opbrengsten en kosten van Europa* (Macroeconomic forecast 2006: revenues and costs of Europe), pp. 152-153. The CPB notes that Europeans benefit not only from economic integration via the internal market but also from EU policy coordination, which helps to prevent wastage resulting from overlapping policy initiatives and unfavourable interactions between governments (race to the bottom). It is difficult to estimate the scale of this wastage.

42 See, *inter alia*, the *Financial Times* of 28 July 2006, in which the German Minister of Economic Affairs stated that economic policy coordination in the euro area is 'deeply unsatisfactory'. During a press conference on 3 August 2006, the president of the European Central Bank noted that it is 'of crucial importance that euro area governments avoid pro-cyclical policies and step up the pace of fiscal consolidation'.

#### **IV.4 External competitiveness**

The European Union's external competitiveness<sup>43</sup> is largely determined by the internal market, the common currency and the Union's open trade and investment policies. These factors are located entirely within the Union's existing policy boundaries, although it appears that in practice member states can be very reluctant to support European policy initiatives, even in these areas. With regard to the above-mentioned three factors, the Lisbon process (with its current division of tasks between the member states and the Union) remains the best strategy for Europe to deal with current and future economic problems while preserving the European social model. Implementing the Lisbon reforms is primarily the task of the member states; the European contribution in this regard is limited chiefly to the open coordination method and is dependent on peer pressure. Although it is important to ensure that the Lisbon agenda remains realistic, the original objectives and time limits should be upheld as much as possible in order to put continuous pressure on the political process. One of the proposals presented by the working group headed by former Dutch prime minister Wim Kok as part of its evaluation of the Lisbon agenda is to draw up an annual list ranking the performance of EU countries.

European internal and external policy is partly shaped by the value system that forms the foundation of the European Union. These values influence policy, for example, on issues relating to sustainability (environmental, development and social policy), which may have major implications for the Union's international competitiveness. The AIV therefore advocates that the Union conduct an intensive dialogue with key trade partners regarding this value system and the policies it generates.

##### *Recommendation 9*

*The AIV believes that further European economic integration, including the further integration of the new member states in the European Union, is essential to meet the challenges of globalisation.*

##### *Recommendation 10*

*The AIV proposes that the government facilitate the future publication of lists comparing member states' performance in relation to the Lisbon objectives.*

Factors such as efficient allocation, economies of scale, innovation, investment incentives and the smooth distribution of new technologies are important for European companies when it comes to maintaining and developing their position in the global market. One and a half billion cheap workers from emerging markets are in the process of entering the global market. In 1980, 70% of workers around the world worked in markets that still had no access to the global market. In 2001, this had declined to just 10%. During the past two decades, Europe as a whole has managed to maintain its position in the global market, during which time total production has risen by 40%. It is noteworthy that the problems affecting the European Union's ability to compete are not general but are concentrated in certain member states and in certain regions and sectors within those states.

<sup>43</sup> The AIV expects to receive a request for advice on this issue in relation to the emerging Asian markets in the near future.

### *Recommendation 11*

*With regard to trade policy, the AIV advises the government to continue focusing attention on strengthening the WTO's multilateral legal system and to strictly ensure that any bilateral or regional accords concluded by the European Union are compatible with WTO rules.*

Globalisation causes fundamental changes for citizens that have a direct impact on their ability to maintain their existing standard of living, fully enjoy their retirement and guarantee a good future for their children. Increasing the competitiveness of Europe as a whole is one way of dealing with the negative consequences of globalisation. This may require sacrifices from citizens in terms of loss of job security, loss of influence on economic decisions and the transfer of economic activity to other EU member states. The need for such sacrifices is not caused by an uncontrolled European Union that is moving inexorably forward but by the fact that globalisation necessitates cooperation at European level. National governments are responsible for explaining to their citizens that effective competition within the European Union, coupled with an active trade policy, arms them against the negative consequences of globalisation.

### *Recommendation 12*

*The AIV advises the government to better prepare Dutch citizens for the inevitable and often far-reaching changes caused by globalisation.*

The European Globalisation Adjustment Fund proposed by the Commission<sup>44</sup> might be able to perform a useful though limited – given all the changes brought about by globalisation – function. In this context, it is important for the fund to focus on facilitating changes and training in the developing labour market rather than on preserving existing structures. The AIV also believes that a study should be carried out to determine how this fund and the resources available to it compare to existing instruments, such as the social, regional and structural funds and funding by the European Investment Bank.

The previous sections discuss only a few key points of European policy, but this does not change the fact that the cost-benefit analysis also works out in favour of citizens in many other policy areas, including the environment, the protection of privacy and consumer protection.

<sup>44</sup> *Proposal for a regulation of the European Parliament and of the Council establishing the European Globalisation Adjustment Fund*, COM (2006) 91 final. See also Press Release IP/06/245, 1 March 2006, and MEMO/06/99, 1 March 2006. The proposal refers to a maximum annual sum of €500 million.

## V New policy priorities

### V.1 Common asylum and immigration policy

Political instability often translates into sudden migration flows, and poor economic prospects can also lead to migration, especially when these two phenomena reinforce each other. The former occurred in the Balkans during the last decade of the previous century, while the latter is currently apparent in the increasing flow of migrants arriving in the Canary Islands, the Iberian peninsula, Italy and Malta.

Asylum and immigration are sensitive policy areas that are becoming increasingly significant for the EU member states, in part because they often have considerable implications in other areas, such as housing, education, and medical and social benefits. Fundamental rights are thus at stake here.

From the European Union's perspective, the policy areas of asylum and immigration are very closely linked to the functioning of the internal market. Just as the common trade policy can be regarded as the external dimension of the free movement of goods and services, asylum and immigration can be regarded as part of the external dimension of the free movement of persons.

The member states have traditionally cooperated on these issues at bilateral or multilateral (e.g. Benelux) level. At European level, cooperation in the field of asylum and immigration started chiefly as a result of the 1990 Schengen Implementation Convention, which entered into force in 1995. Following this example, asylum and immigration were included in the third pillar (JHA) created by the Maastricht Treaty (which, incidentally, had entered into force in 1993).

The European Union has chiefly developed tangible policies in this area since the entry into force of the Treaty of Amsterdam in May 1999, when asylum and immigration were communitarised, along with several other policy areas, and the Schengen *acquis* was fully incorporated into the *acquis communautaire*. Since then, legal interpretation has been shaped by the Tampere Programme. Within the space of five years, the European Union has given legal form to the programme outlined in Title IV of Part Three of the EC Treaty, albeit often by means of decisions of limited or even minimal scope, especially in the case of asylum. Besides the substantive definition of the term 'refugee', these decisions mainly concern procedural issues, such as the processing of asylum applications and the treatment of asylum seekers and their family members.<sup>45</sup>

In the field of immigration,<sup>46</sup> besides a number of measures aimed at combating illegal immigration, the EU has adopted only a limited number of general decisions, including

<sup>45</sup> For the specific issues, see the lists in Article 63(1) and (2) of the EC Treaty.

<sup>46</sup> See Article 63(3) and (4) of the EC Treaty.



the Family Reunification Directive<sup>47</sup> and the Directive on long-term residents.<sup>48</sup> The AIV concludes that although the Union adopted decisions on all issues within a period of five years, their legal interpretation is proceeding slowly and their implementation is unsatisfactory.

EU policy on the deportation of migrants is included in policies aimed at combating illegal immigration, which in turn belong to the field of Police and Judicial Cooperation in Criminal Matters (PJCC) and have therefore not been communitarised. The AIV regrets that very little has come of plans to share this burden between the EU member states.

As a successor to the Tampere Conclusions, the European Union now has the Hague Programme of November 2004,<sup>49</sup> which it implemented by means of the Action Plan of June 2005.<sup>50</sup> It appears from the contents of both documents that the period until 2010 is clearly a second phase in which, as far as asylum is concerned, the emphasis is no longer on minimum standards, as was previously the case, but on the importance of developing a genuine Common European Asylum System. As regards immigration, the latest issues now include legal migration and provision relating to integration.

The Hague Programme also stresses the external dimension of the common asylum and immigration policy, which is reflected in the conclusion of agreements with third countries on the return and readmission of illegal immigrants. In this context, the policy touches on the CFSP (second pillar), development cooperation and trade policy. The need for common action in the area of asylum and immigration also requires policy coherence on the part of the European Union.<sup>51</sup>

As a result of these developments, aliens admission policy, which has so far been a purely national matter,<sup>52</sup> should increasingly become the subject of consultations at European level. The need for this is demonstrated by the unilateral legalisation by Spain, Italy and France of many tens of thousands of illegal immigrants in 2005-2006. In practice, as soon as a member state grants residence rights to a third-country national, he and his family gain access to other member states – through the workings of the internal market – and are able to build a new life there provided they meet certain conditions relating to the possession of sufficient means of support and health insurance. The AIV examined these issues in detail in its advisory letter *From internal*

47 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251/12 of 3 October 2003.

48 Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16/44 of 23 January 2004.

49 The Hague Programme: strengthening freedom, security and justice in the European Union, OJ C 53/1 of 3 March 2005.

50 Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union, OJ C 198/1 of 12 August 2005.

51 Article 3(2) of the EC Treaty.

52 The Constitutional Treaty also regards this as a national competence: see Article III-267(5).

to external borders.<sup>53</sup> Unfortunately, the recommendations it made there have lost little relevance. The AIV now wishes to go a step further in relation to this issue than it did in its previous report by pointing out that a common European approach is in the interests of European citizens.

#### *Recommendation 13*

*The Dutch government should push for more EU regulatory powers regarding the admission of aliens, leading to a comprehensive Community asylum and immigration policy. In the opinion of the AIV, a potentially successful European approach should include the establishment of a European asylum agency, a consultation mechanism for the proposed legalisation of illegal immigrants, measures to make it unattractive at European level to employ illegal immigrants and the communitarisation of deportation policy.<sup>54</sup>*

Current asylum and immigration policy focuses heavily on exclusion and is defensive in nature. This has major disadvantages, because it plays into the hands of criminals who exploit the fact that, for many persons seeking to enter the European Union, the unofficial route is the only available option, for whatever reason. It also gives rise to degrading practices.

#### *Recommendation 14*

*In the AIV's opinion, the Dutch government has every reason to push for an asylum and immigration policy that is based partly on inclusion instead of one that focuses entirely on exclusion. The government should examine how such a policy ought to be formulated.*

## **V.2 Common internal and external security policy**

Like asylum and immigration policy, security policy has been included in cooperation in the field of JHA since the entry into force of the Maastricht Treaty on 1 November 1993. On 1 May 1999, when the Treaty of Amsterdam entered into force, external border control was transferred to the first pillar along with asylum and immigration policy.<sup>55</sup> The attacks of 11 September 2001, and those in Madrid (11 March 2004) and London (7 July 2005), have indirectly stimulated the development of instruments in the field of JHA. In November 2004, the Hague Programme added counterterrorism and information exchange on the basis of the principle of availability<sup>56</sup> to the Tampere Programme.

53 AIV advisory letter no. 7, *From internal to external borders: recommendations for developing a common EU asylum and migration policy by 2009*, March 2004.

54 The AIV also recommends removing existing restrictions on appeals against actions of the institutions responsible for visas, asylum, immigration and so forth. See Article 68 of the EC Treaty, which only grants the right of appeal to courts of first instance.

55 This is the Community dimension of the European Union.

56 This principle entails that certain data that are accessible to the authorities of the member state that controls the data should also be made available to the equivalent competent authorities of other member states. See European Union, *General Report 2005*, Police and customs cooperation, available at: <<http://europa.eu/generalreport/en/2005/rg81.htm>>.

An evaluation of the Tampere Programme published in the summer of 2004 indicates that the member states for the most part perform poorly in terms of compliance with the commitments they have undertaken in the field of JHA. The JHA Council wants to repeat this evaluation of the Commission and the member states in 2007.<sup>57</sup>

Proposals to establish a European Public Prosecution Service and communitarise three agencies – the European Police Office (Europol), the European Police College (CEPOL) and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) – will require closer cooperation between a limited number of member states in the coming years. The Prüm Convention, the Treaty of Enschede and the Senningen Memorandum<sup>58</sup> demonstrate that, on a smaller scale, police and judicial authorities are willing to engage in far-reaching transnational and operational cooperation in the areas of crisis management, public order and combating crime. These treaties are intergovernmental, but the question arises whether such matters could not be dealt with more effectively as ‘closer cooperation’ in the framework of the Treaty on European Union.

The AIV believes that the European Union has rightly pushed for greater cooperation in the field of security and police matters in view of the latent security threat. The history of the development of the draft Constitution indicates that consensus was achieved on granting greater freedom of action to the Union in this area, albeit with due regard for national autonomy and differentiation. The European Commission recently proposed transferring the field of internal security (i.e. PJCC) to the first pillar. This can be done by using a *passerelle* or bridging clause, which is discussed in more detail in chapter VI. It is therefore regrettable that a majority of member states opposed the Commission’s ideas in this area at a recent Council meeting in Tampere.<sup>59</sup> It is surprising that member states that otherwise attach great importance to the Constitutional Treaty, which would have imposed such a policy, opposed the Commission’s proposals.

#### *Recommendation 15*

*The AIV argues that the government should endeavour to increase the number of parties to agreements like the Prüm Convention and the Treaty of Enschede, so that they can be brought under the provision on closer cooperation in the Treaty of Nice.*

57 Council of the European Union, Conclusions, Justice and Home Affairs, Luxembourg, 5-6 October 2006, 13068/06 (Presse 258), Press Release, 2752nd Council Meeting, available at: <[http://www.eu2006.fi/news\\_and\\_documents/conclusions/vko42/en\\_GB/1161023606535\\_1/](http://www.eu2006.fi/news_and_documents/conclusions/vko42/en_GB/1161023606535_1/)>.

58 The Prüm Convention on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal immigration, was signed on 27 May 2005 by Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Spain and is open for signature by other EU member states. See Council document 10900 of 7 July 2005. The Senningen Memorandum is an agreement on cooperation in the fields of police, judicial and immigration matters between the Ministers of Justice of Belgium, the Netherlands and Luxembourg, the Ministers of the Interior of Belgium and the Netherlands and the Minister of Defence of Luxembourg and was signed on 4 June 1996. See Benelux Almanak 2005. The Treaty of Enschede relates to police cooperation between the Netherlands and Germany. The treaty was signed on 7 June 2006 but has not yet entered into force. See Treaty Series 2005-86 and 2005-241.

59 Informal JHA Council in Tampere, 21 and 22 September 2006. See the Letter to Parliament on this issue, Parliamentary Papers II 22 112, no. 464, p. 11.

*This means that the AIV maintains its position that the government should keep striving to transform the consensus achieved on the issue of internal and external security policy into a treaty-based regime as soon as possible.*

### **V.3 European energy policy**

In the debate on reinforcing and expanding the European Union's current tasks, energy policy is referred to in the context of the theme of security of energy supply.<sup>60</sup> This issue has a direct impact on the Union's internal and external security, in the sense that the EU is faced with the incontrovertible fact that it is increasingly dependent on external energy imports and that it will remain so for many years to come.

In its advisory report *Energised foreign policy: security of energy supply as a new key objective*, which it published together with the General Energy Council (AER),<sup>61</sup> the AIV devoted detailed attention to the major changes taking place in the international energy market and the resulting repercussions for both the European Union and the Netherlands. The present report translates these facts into a policy that the Netherlands and the European Union should pursue. It speaks for itself that vital interests are at stake for the Netherlands, given its importance as a producer, a consumer and a centrally located transit country for energy.

Under current and foreseeable circumstances, it is expected that the costs resulting from the failure of the member states to take joint action in the field of energy will gradually increase, especially in relation to the main supplier countries. Without such action, it is impossible to achieve economic and strategic economies of scale, and attempts by member states to deal with these changed circumstances on their own will increasingly prove to be inadequate, ineffective and possibly even incompatible.

A key issue in this context is the relationship with Russia. The AIV considers it advisable, if not essential, to work towards establishing an institutional – or at least contractual – framework with that country, possibly on the basis of the Energy Charter<sup>62</sup> that was ratified by the European Union some years ago (but not yet by Russia). Such a framework would give substance to the mutual importance of security of supply and market security as well as mutual investment opportunities.

The serious problems recently encountered by all non-Russian energy companies operating in the Russian Federation highlight the appeal of a clear legal framework for trade and investment, building on the principles agreed at the G8 summit in July 2006 at the initiative of President Putin. Such a framework should be based on reciprocity in relations. In order to achieve this, the EU member states have to adopt a common position. The renewal of the partnership and cooperation agreement between the

60 Brussels European Council, Presidency Conclusions, 22 and 23 March 2006, 7775/1/06, REV1, CONCL1.

61 AER/AIV advisory report no. 46, *Energised foreign policy: security of energy supply as a new key objective*, December 2005.

62 The Energy Charter Treaty and the Energy Charter Protocol on energy efficiency and related environmental aspects, in force since 16 April 1998. Council and Commission Decision 98/181/EC, ECSC, Euratom, available at: <<http://europa.eu/scadplus/leg/en/lvb/l27028.htm>>.

European Union and Russia, which runs out in 2007, may provide an opportunity for the conclusion of such an agreement, which should actually cover a wider range of issues than energy policy alone.<sup>63</sup> Following the recent meeting between the European Council and President Putin, the AIV underlines its earlier recommendation that 'it is crucial for the European Union's long-term energy security that the EU as a whole regard these issues from a strategic standpoint and accord them a high priority in developing the agreed economic space with Russia'. This places energy policy in a much broader context.

#### *Recommendation 16*

*The AIV advocates that the Netherlands devote all its efforts to building an EU-wide consensus, obviously in close cooperation with the business sector, on the main features of a harmonised and coordinated energy policy, in which all factors – the environment, conservation, sustainability, security of supply and improving the functioning of the internal market – are considered together as part of an integrated approach.*

The current widespread debate on carbon emissions, their connection to climate change and the implications for economic growth<sup>64</sup> fully underscores the importance of this recommendation. The AIV argues that energy security should be seen in the broader and more urgent light of environmental conservation, climate change and economic growth in view of the connections between these issues. It welcomes the fact that, in their capacity as members of the European Council, Prime Minister Blair and Prime Minister Balkenende<sup>65</sup> are putting pressure on the Council to ask the European Commission to produce proposals for targeted measures, including further reductions in carbon emissions, as early as possible in 2007 (i.e. very soon indeed).

At the same time, the Netherlands should obviously not neglect existing bilateral relations with energy-producing countries. If necessary, these relations can be shifted to a broader framework. The Netherlands should promote security of energy supply at this level, in part because the proposed EU policy may take time to materialise. The lack of a legal basis for such a policy, including its external aspects, in the treaties is a serious handicap but does not necessarily rule out useful, result-oriented cooperation. For instance, the fact that it is possible to negotiate with third countries without a treaty basis has been demonstrated in the case of airport landing rights. The Green Paper presented by the European Commission in March 2006 provides an entirely functional, if so far modest, starting point for such an approach.<sup>66</sup> Finally, the AIV

63 AIV advisory report no. 44, *The European Union's new eastern neighbours*, July 2005.

64 Sir Nicolas Stern, *Review on the Economics of Climate Change*, Cambridge University Press, presented on 30 October 2006; European Environment Agency, *Greenhouse gas emission trends and projections in Europe 2006*, EEA report no. 9/2006, presented on 27 October 2006; World Wild Life Fund, *Living Planet Report 2006*, published on 23 October 2006; European Commission, *Progress towards achieving the Kyoto targets*, COM (2006) 658. In addition, the presentation of former US Vice-President Al Gore's film *An Inconvenient Truth* (on 11 October 2006) also contributes to the sense of urgency.

65 Letter from Prime Minister Balkenende and Prime Minister Blair to the President of the European Council, Matti Vanhanen, 19 October 2006.

66 European Commission, *Green Paper – A European Strategy for Sustainable, Competitive and Secure Energy*, COM (2006) 105 final, 8 March 2006.

notes that all the governments concerned confirmed the consensus on this issue in the draft Constitution.<sup>67</sup>

It is vital for the member states to realise that they have a common interest. If they fail to do so adequately, it will prove impossible to break the ingrained habits of a strictly national approach to energy. The AIV is firmly of the opinion that formulating vague objectives and promises, with 'open coordination' as the only decision-making model, will not provide a solution. In order to pursue an effective European energy policy, it is therefore essential to establish a specific legal basis in the treaties (see recommendation 23).

The pursuit of a European energy policy must be complemented by measures that make it possible to act effectively in crisis situations and avoid such situations as much as possible. Examples of such measures include:

- diversifying by origin, in the case of both oil and gas, for example by utilising LNG port facilities and storage;
- developing a mechanism for mutual support and assistance between member states in case of interruptions in the energy supply; and
- organising international protection of maritime supply routes against blockades or other obstacles, including options for rapid response.

The AIV in no way underestimates the difficulty of achieving a European consensus across this broad range of issues and interests. If it proves to be unachievable, the AIV believes that the government should actively pursue cooperation with a limited number of member states in the near future, especially with those located in the north-western corner of the continent.

In chapters IV and V, the AIV has obviously been unable to offer an exhaustive evaluation of the desirability of transferring certain competences in specific areas to the European Union. However, it trusts that it has shown how well a judicious transfer of competences (which has been tested for expediency, subsidiarity and proportionality) to the European Union, coupled with an effective decision-making framework, would serve the public interest and the interests of the Netherlands. Within this framework, member states (or groups of member states that share the same opinion) must be able to exercise influence effectively, and implementation will have to take place under stricter democratic controls than those currently in force.

This intensification or, in the case of energy, expansion of tasks should inspire governments and motivate citizens to give a fresh impetus to the integration process.

<sup>67</sup> *Treaty establishing a Constitution for Europe*, Article III-256.

# VI Effectiveness

## V.1 Introduction

Achieving tangible policy results in the European Union in the areas mentioned in the previous chapter requires a dramatic improvement in the Union's effectiveness as well as a simultaneous increase in support for the Union through greater involvement of citizens in policymaking.

At present, the European Union is forced to live with complicated decision-making procedures and a complex method of governance that are the result of a historical process and are entirely inappropriate for a Union of 27 member states. Thus, for example, the various policy areas have been accommodated in three pillars that each have their own decision-making regime.<sup>68</sup> The roles of the Council, the Commission and the European Parliament are therefore different in each pillar, and this harms the effectiveness and coordination of decision-making as well as rendering it less than transparent to the public.

Conferring tasks on the European Union but denying it the institutional effectiveness it needs to perform them leads to frustration among citizens and ultimately to a catastrophic loss of confidence in the Union. Given the lack of input legitimacy, which causes citizens to feel insufficiently involved because they have too little influence on European policy, the AIV warns against raising expectations concerning European cooperation and harmonisation without providing the Union with the instruments it needs to satisfy those expectations.

The main improvements can only be realised by revising the EC and EU Treaties. Many of them, such as abolishing the pillar structure and simplifying decision-making procedures and instruments, were provided for in the Constitutional Treaty. These changes would have significantly rationalised decision-making. In the current debate, heads of government and national parliaments are raising various ideas from the Constitutional Treaty. Examples of this include introducing a subsidiarity test, allowing the Council's legislative deliberations to be held in public and recognising the citizen's initiative as a powerful political signal to the Commission.

In the following sections, the AIV first identifies the times at which treaty revisions are necessary. It then examines the issues that, on the basis of the Laeken Declaration, should be considered in any discussion concerning treaty revisions. Next, the AIV discusses those improvements that are necessary for achieving tangible policy results in the areas identified as priority areas in the previous chapter. In this context, it also devotes attention to several improvements that can be introduced without revising the treaties. Finally, the AIV raises some issues that may have less priority but which it considers important to citizens.

68 For a brief explanation, see, for example, the following EU webpages: <[http://europa.eu/abc/eurojargon/index\\_en.htm](http://europa.eu/abc/eurojargon/index_en.htm)> and <[http://europa.eu/scadplus/glossary/eu\\_pillars\\_en.htm](http://europa.eu/scadplus/glossary/eu_pillars_en.htm)>.

## **VI.2 Times at which treaty revisions are necessary**

Any discussion on the future of the European Union inevitably comes up against the question of when treaty revisions will be necessary. Although it is clear that the government will not submit the Constitutional Treaty to parliament for a second time, it is also impossible to ignore the fact that 15 – soon perhaps to be 16 – member states have already ratified the Constitutional Treaty. In the future, moreover, a number of treaty provisions will have to be amended following the accession of Bulgaria and Romania on 1 January 2007.

When a new Commission takes office following the accession of the 27th member state, the number of members of the Commission will have to be restricted. Although this issue will theoretically only arise in 2009, when a new Commission takes office, it cannot be ruled out that the present Commission will be forced to step down sooner for some reason or other. If that were to happen, new rules would have to take effect.<sup>69</sup>

In that case, the relevant accession treaties could include other amendments besides those necessitated by the accession in question. However, it is expected that no new accession treaties will be concluded until long after 2009.

In contrast, the AIV believes that these amendments should enter into force as soon as possible. To this end, it is vital that the European political parties make the treaty amendments scheduled for 2009, the year in which the next European elections will be held and a new Commission must be appointed, the main issue of their election campaigns (unless the amendments have been adopted by then). This will contribute to the desired politicisation of the European debate and increase citizens' involvement.

### *Recommendation 17*

*The AIV advises the government not to put off formulating a position on treaty amendments, despite the fact that little progress can be achieved on key institutional issues before the French presidential elections in 2007. At the same time, it is precisely the Netherlands and France that should be expected to propose alternative solutions to the impasse that has arisen. These proposals should play a role in the debate on the continuation of the reform process that will develop among the member states following the end of the period of reflection in 2007. The political parties should treat the necessary treaty amendments as an important issue in the European elections.*

## **VI.3 Back to the Laeken Declaration**

It is unlikely to be possible to reform the European Union outside the framework of the Constitutional Treaty or to realise a limited number of improvements desired by the Netherlands by proposing to salvage a small number of provisions. This is because the 15 member states that ratified the treaty (which was signed by the governments of all the member states) will not be keen to cooperate on a solution that consigns the treaty directly to the proverbial dustbin. In addition, they will not be willing to accept an *à la carte* selection, as almost every part of the treaty is the result of a trade-off in which several articles relating to different issues were accepted simultaneously.

<sup>69</sup> Treaty of Nice, Article 4(2) of the Protocol on the enlargement of the European Union.



In discussions concerning the current impasse during 2007, the Netherlands would be well-advised to adopt a position that might elicit some sympathy from the above-mentioned member states. It should be able to do so by invoking the Laeken Declaration, which eventually led to the drafting of the Constitutional Treaty.

In the Laeken Declaration, the European Council raised three themes for EU reform that have remained relevant following the referendums in France and the Netherlands and can still rely on widespread support. They are:

- a better division and definition of competences in the European Union;
- simplification of the Union's instruments; and
- more democracy, transparency and efficiency in the European Union.

Acknowledging that the Constitutional Treaty contains valuable provisions on these points should not cost the Netherlands too much trouble.

In doing so, it should obviously refer to the earlier agreement to develop these themes in the Constitutional Treaty, while making clear that it is abandoning the ambition to adopt a Constitution as a follow-up to the Laeken Declaration.

This position implies that the existing structure of the EC and EU Treaties will be maintained and that the only amendments that will be made to them are those that derive directly from the above-mentioned themes of the Laeken Declaration and whatever was agreed in this regard during the negotiations on the draft Constitution.

#### *Recommendation 18*

*The Netherlands must be willing to discuss a revision of the EC and EU Treaties on the basis of the themes from the Laeken Declaration referred to above.*

### **VI.4 Priority improvements**

The position that the Netherlands is willing to discuss a revision of the EC and EU Treaties on the basis of the themes in the Laeken Declaration, means that the government will identify the areas in which it believes treaty amendments are indispensable in light of the above-mentioned policy priorities. Incidentally, this does not rule out amendments in other areas that are relevant to these themes.

With regard to *democracy*, the Netherlands should aim for the following three amendments:

#### *Recommendation 19*

*Grant the European Parliament codecision powers in respect of all majority decisions that are not yet subject to the codecision procedure, such as in the field of agricultural policy.*

#### *Recommendation 20*

*Place the European Parliament on an equal footing with the Council in the budgetary procedure; abolish the distinction between 'compulsory' and 'non-compulsory' expenditure.*

#### *Recommendation 21*

*In addition, strengthen the role of national parliaments and introduce the subsidiarity and proportionality tests they are to perform.*

It is worth examining how much progress can be achieved in these areas by means of agreements or other arrangements in anticipation of treaty amendments. Thus, for example, the Brussels European Council of June 2006 decided to support national parliaments more actively in testing for subsidiarity (as well as proportionality and expediency). In addition, the Commission has promised to make all proposals and documents directly available to national parliaments for the purpose of consultation and to carefully consider their comments arising from the subsidiarity test.

In general, it is worth noting that the Council, the Commission and the European Parliament are all free to commit themselves to a particular approach in the exercise of their competences and to lay this down in an Interinstitutional Agreement (IIA, see for example Article 251 of the EC Treaty). Such agreements have already been used on several occasions to increase the Union's effectiveness, especially in relation to the budget, the application of the subsidiarity principle and the drafting of Community legislation.

In the framework of an IIA, for example, the institutions could agree to grant the European Parliament codecision powers in respect of all majority decisions that are not yet subject to the codecision procedure under the EC Treaty, such as in the field of the Common Agricultural Policy, in particular. Similarly, the institutions could agree that the Council should attach the same consequences to amendments proposed by the European Parliament concerning compulsory expenditure as it does in the case of non-compulsory expenditure, so that the European Parliament could participate in the budgetary procedure on an equal footing with the Council. Obviously, the Council and the European Parliament should be involved in this decision in their capacity as legislative powers, but the Commission should also be involved because it has the right of initiative.

With regard to *efficiency*, the Netherlands should aim for a number of treaty amendments (see recommendations 22, 24, 25 and 26).

#### *Recommendation 22*

*Expand the number of cases in which decisions can be adopted by qualified majority vote.*

The AIV asked itself whether it would be possible to convert a number of unanimity decisions into qualified majority decisions by means of an IIA, pending a treaty amendment to that effect. However, it concluded that this would be impossible, as it would change existing decision-making procedures by circumventing the framework of the EC Treaty. In practice, IIAs may not amend or supplement the provisions of the treaty.<sup>70</sup>

However, the institutions could agree in an IIA on a procedure for instructing the President of the Council, under certain circumstances, to prevail upon a minority in the

70 Cf. Declaration no. 3 to the Treaty of Nice: 'In relations between those institutions, when it proves necessary, in the context of that duty of sincere cooperation, to facilitate the application of the provisions of the *Treaty establishing the European Community*, the European Parliament, the Council and the Commission may conclude interinstitutional agreements. *Such agreements may not amend or supplement the provisions of the Treaty* and may be concluded only with the agreement of these three institutions.' (emphasis added).

Council to abstain from voting, if a decision concerning part of the multi-year programme adopted by the European Council and the European Parliament, acting on a proposal from the Commission, repeatedly fails to materialise because the required unanimity cannot be achieved in the Council.

In such cases, the following procedure might apply:

If the President of the Council, after examining the situation in consultation with the Presidents of the European Parliament and the Commission, concludes:

- that a qualified majority of the Council supports the proposal;
- that a majority of the Parliament also supports the proposal; and
- that further technical adjustments on the initiative of the Commission provide no solution;

the members of the Council that did not support the proposal will reconsider their position, at the request of the President, in order to determine whether they can still facilitate a decision on this part of the multi-year programme by abstaining from voting. They will notify the President of the outcome of this reconsideration as swiftly as possible.

#### *Recommendation 23*

*Make more use of Interinstitutional Agreements to enable the European Union to act more effectively without the need for formal treaty amendments, for example on budgetary matters or when withholding aid in lengthy controversial cases.*

#### *Recommendation 24*

*Establish the post of Union Minister for Foreign Affairs.*

It is clear from the AIV's assertions in chapters 4 and 5 regarding the European Union's existing priority tasks that the external dimension of EU policy is of fundamental importance for further integration. Unfortunately, of all the competences allocated to the Union, this policy dimension is among the least developed. This situation justifies establishing the post of Union Minister of Foreign Affairs.

The unanimity rule applies across the board in the area of foreign policy. The Council even has to decide unanimously whether matters relating to the implementation of foreign policy can be decided by majority. This often renders the Union incapable of action, despite the fact that major European interests are frequently at stake in this area. If the cost-benefit analysis favours further communitarisation, as indicated above, this should also apply to the foreign policy aspects of the Union's activities. Incidentally, this view receives some support in the programmes of certain important political parties, which appear to qualify the unanimity rule.

On this issue, the AIV maintains its previous position that the solution to coordination problems in the field of external relations should be sought in strengthening cooperation between the High Representative for the CFSP and the European Commissioner for External Relations. Among other things, this could lead to joint initiatives.<sup>71</sup> When the

71 See AIV advisory report no. 27, *Bridging the gap between citizens and Brussels: towards greater legitimacy and effectiveness for the European Union*, May 2002, p. 34; and AIV advisory report no. 32, *Follow-up report: Bridging the gap between citizens and Brussels: towards greater legitimacy and effectiveness for the European Union*, April 2003, pp. 24-25.

High Representative presents proposals based on these initiatives in areas in which he has a mandate, the Council should decide on them by qualified majority.

*Recommendation 25*

*Replace the current requirement for a triple qualified majority in the European Council and the Council with a requirement for a double majority.*

*Recommendation 26*

*Transfer Police and Judicial Cooperation in Criminal Matters (PJCC) to the first pillar.*

The European Union should also strive to introduce treaty amendments in the above-mentioned two areas. The Commission's Communication of 28 June 2006, in which it discusses the application of the *passerelle* clause in Article 42 of the EU Treaty in the context of the implementation of the Hague Programme, is interesting in this connection.<sup>72</sup> This raises a number of important issues, which are discussed below.

The contents of Title VI of the EU Treaty determines what issues can be communitarised by means of the *passerelle* clause: cooperation under the third pillar. In essence, therefore, this concerns PJCC. The section of the EC Treaty to which these third pillar issues are transferred is Title IV of Part Three. The decision-making procedure that applies to the transfer is complicated. It requires a unanimous Council decision as well as approval in accordance with the respective constitutional requirements of the member states. In most cases, this will amount to formal approval by national parliaments. Finally, the Council has to determine which voting procedures will apply following the transfer of third pillar issues to Title IV. As a result, the issue that is to be transferred does not automatically fall under the codecision procedure. This still leaves aside the fact that Article 67 of the EC Treaty can be read in conjunction with the Council's Decision of 22 December 2004, which states that not all issues in Title IV fall under the scope of this procedure.

In response to the Commission's Communication, the Dutch government has indicated that the Netherlands will adopt a constructive approach. However, the government is also in favour of an approach that examines on a case-by-case basis whether applying the *passerelle* clause in Article 42 of the EU Treaty, in conjunction with Article 67(2) of the EC Treaty or otherwise, is advisable.<sup>73</sup>

*Recommendation 27*

*Apply the passerelle clause in the third pillar as a serious option for improving decision-making procedures in the policy fields of asylum and immigration and internal and external security.*

The priorities in the fields of asylum and immigration and internal and external security

<sup>72</sup> Pursuant to Article 42 of the Treaty on European Union, the European Council 'acting unanimously on the initiative of the Commission or a Member State, and after consulting the European Parliament, may decide that action in areas referred to in Article 29 shall fall under Title IV of the Treaty establishing the European Community, and at the same time determine the relevant voting conditions relating to it. It shall recommend the Member States to adopt that decision in accordance with their respective constitutional requirements.'

<sup>73</sup> Parliamentary Papers II 22 112, no. 464, p. 9 et seq. See also *NJB*, 29 September 2006, p. 1983.

described in chapter 5 raise sensitive issues of identity and nationality. The member states' reluctance to accept far-reaching, binding Community obligations is therefore understandable. For this reason, the unanimity rule is either regarded as part of the system or as a burdensome institutional procedure. In this context, the AIV refers to the treaty-based option of enhanced cooperation, which has already been discussed and which in the past – albeit in a slightly different context – produced important results (such as the Schengen Agreement and EMU). It is understandable, given the European Union's traditional approach to differentiation, that the decision-making procedure for enhanced cooperation is complicated. Eight member states must want to go down this path, which is a good proportion based on a membership of 25 or 27 member states. However, the AIV believes that decision-making by unanimity is excessive in this case. The procedure for closer cooperation needs to be more flexible – not in relation to the requirement that the objective in question may not conflict with objectives of the treaties, but in relation to the fact that the European Commission's opinion in this regard should be sufficient.

#### *Recommendation 28*

*Improve the rules governing enhanced cooperation by dropping the unanimity requirement.*

Compared to the other policy areas that the European Union must prioritise in the immediate future, European energy policy is a new one. The others can be regarded as an intensification of existing policies, which are based on existing treaty provisions. As yet, there is no such treaty basis for a European energy policy. In order to develop a comprehensive and effective energy policy, a treaty basis is therefore required.

#### *Recommendation 29*

*The AIV recommends establishing a specific legal basis in the treaties for developing a European energy policy.*

### **VI.5 Other improvements**

#### *A. The subsidiarity test*

The Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC) has identified a number of issues to which national parliaments should apply the subsidiarity test.<sup>74</sup> This is an evaluation of Commission proposals, within a period of six weeks, to determine whether the issue concerned should be dealt with by the European Union or by the member states. An experiment is being conducted in this area using proposals concerning the European rail system.<sup>75</sup>

The AIV notes that, in the past, it was usually desirable to take action at European level but that problems arose when it came to translating this action into national

<sup>74</sup> Article II(5) of the Protocol on the role of national parliaments in the European Union introduced by the Treaty of Amsterdam literally states that 'COSAC may examine any legislative proposal or initiative in relation to the establishment of an area of freedom, security and justice which might have a direct bearing on the rights and freedoms of individuals.'

See: <http://www.cosac.eu/en/documents/basic/protocol/english>.

<sup>75</sup> *Further integration of the European rail system: third railway package*, COM (2004) 140 final, 3 March 2004.

measures. The fact is that, in addition to subsidiarity, proportionality also plays a role both in the directive itself and in its implementation by the member states. The question is whether the directive and its implementation at national level bear a reasonable proportion to the problem concerned and are not overly detailed or far-reaching. The directive itself, the sharpening of a European framework directive at national level and the insufficient consideration by national governments of the interests at stake in implementing a directive often give rise to discontent.

In the AIV's view, the importance of the subsidiarity test for Commission proposals lies mainly in the early involvement of national parliamentarians.<sup>76</sup> The idea is that, due to the early politicisation of the debate, the parliamentarians concerned will continue to show an interest in the follow-up to the negotiations and, if necessary, be able to consult the relevant civil society organisations in a timely manner. The weekly consultations between members of government and parliamentarians on the Brussels agenda will consequently become more substantive and will have an impact on the Dutch input in Brussels. At any rate, it will prevent parliamentarians and citizens from feeling that they only find out about the subject matter of directives during the final phase of their implementation. At the same time, however, it is important not to create a rigid catalogue of EU competences. Care must therefore be taken to ensure that the European Union does not become incapable of responding to new developments because its tasks are defined too narrowly. Incidentally, it is important to remember that the subsidiarity test only applies to policy areas where the EU and national authorities share competence. In these areas, the efforts of parliamentary committees should focus not only on blocking EU legislation but also on indicating in what areas, for what reasons and on what conditions European rules are desirable. The AIV regrets that the subsidiarity issue has recently been approached primarily from a negative perspective and that it is regarded as an opportunity for ensuring 'less' Europe.

#### *Recommendation 30*

*The AIV advises the government to use the subsidiarity test only to determine whether there is a desire (or need) for EU action, what scope remains for national autonomy and whether the proposed provisions will solve problems and be sufficiently sustainable (i.e. to evaluate expediency, subsidiarity and proportionality).*

#### *B. The citizens' initiative*

The Constitutional Treaty's proposal to establish a citizens' initiative based on one million signatures (to be submitted electronically) was intended to increase the involvement of citizens, encourage the Commission to seriously consider the initiative and force governments to defend their positions on the issue in question.

#### *Recommendation 31*

*The AIV recommends establishing a citizens' initiative, which should be interpreted as sending a powerful message to the Commission even if it is not formally enshrined in the treaties.*

#### *C. The open coordination method*

In many policy areas that are not yet ready for official EU legislation, but where

<sup>76</sup> AIV advisory letter no. 10, *The European Union and its relations with Dutch citizens*, December 2005, Parliamentary Paper 30 300 V, no. 18

harmonisation would strictly speaking be desirable, there are few options other than the open coordination method. However, experience teaches that even if they have entered into formal commitments, member states still violate their commitment to coordinate, with the result that confidence in the government is undermined. A notorious example of this is the non-observance of agreements concluded in the framework of the Stability and Growth Pact.

*Recommendation 32*

*The AIV warns against coordination that cannot be enforced. Programming, notifying or consulting with others on policy intentions, and naming and shaming are vital for imbuing important projects with a certain amount of credibility.*

*D. An administrative burden test for EU legislation*

To increase support for the European Union, it is also important to prevent it from adopting unnecessarily complex or costly legislation. This necessitates the introduction of a test to assess the administrative burden of EU legislation. The work of the Dutch Administrative Burden Advisory Board (ACTAL) can serve as a benchmark for developing such a test at the level of the European Commission. This would enable an independent institution to monitor further deregulation in the European Union. This kind of test could be introduced without the need for a treaty amendment. During the European Convention and the Dutch EU presidency in 2004, the government advocated the introduction of such a test.

*Recommendation 33*

*The AIV recommends introducing an independent test, along the lines of the model developed by the Dutch Administrative Burden Advisory Board, to assess the administrative burdens resulting from the Commission's legislative proposals.*

## VII Recommendations

The AIV did not wish – nor would it have been able – to provide a blueprint of the future European Union in this report. The European integration process is too fluid and too diverse for this purpose, both conceptually and in terms of the Union's tasks. It appears to be impossible to reconcile national identity with mounting globalisation. The balance of power in Europe is changing, the Netherlands is no longer the 'smallest of the large countries' and public opinion in the Netherlands is rarely motivated by fascinating European issues, despite the fact that the future of the continent, and therefore of the Netherlands, is at stake. This advisory report is therefore more like an interim report: no rehashing of old arguments, because there is no time for that, but a call to action in the face of coming developments, regarding which the Netherlands will have to adopt a position one way or another. In doing so, it must focus on its citizens: on understanding their ambitions, on translating these ambitions into European policy via the processes of participation and politicisation, on strengthening the link between parliament and government in the European integration process and on politicising Europe more effectively by establishing truly European political parties and making the Union more democratic. In this context, the AIV makes the following recommendations.

### **From chapter II: Healthy finances**

#### *Recommendation 1*

*The AIV believes that the transfer of resources to the European Union should be fundamentally separate from national budgets. Only then will it be possible to discuss the implementation of EU policy, including the allocation of resources, without reference to constantly shifting interests regarding the revenue side of the EU budget.*

#### *Recommendation 2*

*The European Council should instruct an authoritative panel of experts from the member states to come up with an appropriate own resources system for the European Union that is independent of national budgets. This should take place as soon as possible, namely before 2008, when the aforementioned financial review will be on the Council's agenda.*

### **From chapter III: Citizens**

#### **- on structure of governance (section III.3):**

#### *Recommendation 3*

*The structure of governance needs to be streamlined to increase the Union's effectiveness. Only then will the aforementioned actions have any chance of success. New policy initiatives and the improvement of the Union's structure should therefore go hand in hand.*

#### **- on enlargement (section III.3):**

#### *Recommendation 4*

*The AIV notes that, in view of the diversity of the member states aspiring to EU membership, the possibility of different forms of membership is being rejected too easily and too soon. A debate on this issue would be a good complement to the European Neighbourhood Policy, which currently rejects all forms of membership.*



- **on involving citizens (section III.4):**

Recommendation 5

*The debate on the future of Europe should be much more politicised than it is at present. This applies not only to the introduction by parliament of the subsidiarity test but also to making the future direction and development of European integration a central feature of the forthcoming government programme.*

**From chapter IV: Priorities in existing policies**

- **on the internal market and socioeconomic values (section IV.2):**

Recommendation 6

*In the AIV's view, the European Union should promote widely supported values such as peace, security, freedom and democracy more explicitly in its policies and explain the need for a Social Europe.*

Recommendation 7

*Given the importance of economic growth, the AIV advises the government to mount a targeted publicity campaign to highlight the economic significance of further services liberalisation.*

- **on Economic and Monetary Union (section IV.3):**

Recommendation 8

*The AIV points out the importance of supporting the common currency by means of effective policies to supplement the completion of the internal market.*

- **on external competitiveness (section IV.4):**

Recommendation 9

*The AIV believes that further European economic integration, including the further integration of the new member states in the European Union, is essential to meet the challenges of globalisation.*

Recommendation 10

*The AIV proposes that the government facilitate the future publication of lists comparing the member states' performance in relation to the Lisbon objectives.*

Recommendation 11

*With regard to trade policy, the AIV advises the government to continue focusing attention on strengthening the WTO's multilateral legal system and to strictly ensure that any bilateral or regional accords concluded by the European Union are compatible with WTO rules.*

Recommendation 12

*The AIV advises the government to better prepare Dutch citizens for the inevitable and often far-reaching changes caused by globalisation.*

**From chapter V: New policy priorities**

- **on asylum and immigration policy (section V.1):**

Recommendation 13

*The Dutch government should push for more EU regulatory powers regarding the admission of aliens, leading to a comprehensive Community asylum and immigration policy. In the opinion of the AIV, a potentially successful European approach should include the establishment of a European asylum agency, a consultation mechanism for the proposed legalisation of illegal immigrants, measures to make it unattractive at*

*European level to employ illegal immigrants and the communitarisation of deportation policy.*

*Recommendation 14*

*In the AIV's opinion, the Dutch government has every reason to push for an asylum and immigration policy that is based partly on inclusion instead of one that focuses entirely on exclusion. The government should examine how such a policy ought to be formulated.*

**- on internal and external security policy (section V.2):**

*Recommendation 15*

*The AIV argues that the government should endeavour to increase the number of parties to agreements like the Prüm Convention and the Treaty of Enschede, so that they can be brought under the provision on closer cooperation in the Treaty of Nice. This means that the AIV maintains its position that the government should keep striving to transform the consensus achieved on the issue of internal and external security policy into a treaty-based regime as soon as possible.*

**- on energy policy (section V.3):**

*Recommendation 16*

*The AIV advocates that the Netherlands devote all its efforts to building an EU-wide consensus, obviously in close cooperation with the business sector, on the main features of a harmonised and coordinated energy policy, in which all factors – the environment, conservation, sustainability, security of supply and improving the functioning of the internal market – are considered together as part of an integrated approach.*

**From chapter VI: Effectiveness**

**- on times at which treaty amendments are necessary (section VI.2):**

*Recommendation 17*

*The AIV advises the government not to put off formulating a position on treaty amendments, despite the fact that little progress can be achieved on key institutional issues before the French presidential elections in 2007. At the same time, it is precisely the Netherlands and France that should be expected to propose alternative solutions to the impasse that has arisen. These proposals should play a role in the debate on the continuation of the reform process that will develop among the member states following the end of the period of reflection in 2007. The political parties should treat the necessary treaty amendments as an important issue in the European elections.*

**- on returning to the Laeken Declaration (section VI.3):**

*Recommendation 18*

*The Netherlands must be willing to discuss a revision of the EC and EU Treaties on the basis of the themes from the Laeken Declaration referred to above.*

**- on priority improvements (section VI.4):**

*Recommendation 19*

*Grant the European Parliament codecision powers in respect of all majority decisions that are not yet subject to the codecision procedure, such as in the field of agricultural policy.*

*Recommendation 20*

*Place the European Parliament on an equal footing with the Council in the budgetary procedure; abolish the distinction between ‘compulsory’ and ‘non-compulsory’ expenditure.*

*Recommendation 21*

*In addition, strengthen the role of national parliaments and introduce the subsidiarity and proportionality tests they are to perform.*

*Recommendation 22*

*Expand the number of cases in which decisions can be adopted by qualified majority vote.*

*Recommendation 23*

*Make more use of Interinstitutional Agreements to enable the European Union to act more effectively without the need for formal treaty amendments, for example on budgetary matters or when withholding aid in lengthy controversial cases.*

*Recommendation 24*

*Establish the post of Union Minister for Foreign Affairs.*

*Recommendation 25*

*Replace the current requirement for a triple qualified majority in the European Council and the Council with a requirement for a double majority.*

*Recommendation 26*

*Transfer Police and Judicial Cooperation in Criminal Matters (PJCC) to the first pillar.*

*Recommendation 27*

*Apply the passerelle clause in the third pillar as a serious option for improving decision-making procedures in the policy fields of asylum and immigration and internal and external security.*

*Recommendation 28*

*Improve the rules governing enhanced cooperation by dropping the unanimity requirement.*

*Recommendation 29*

*The AIV recommends establishing a specific legal basis in the treaties for developing a European energy policy.*

**- on other improvements (section VI.5):**

*Recommendation 30*

*The AIV advises the government to use the subsidiarity test only to determine whether there is a desire (or need) for EU action, what scope remains for national autonomy and whether the proposed provisions will solve problems and be sufficiently sustainable (i.e. to evaluate expediency, subsidiarity and proportionality).*

*Recommendation 31*

*he AIV recommends establishing a citizens’ initiative, which should be interpreted as sending a powerful message to the Commission even if it is not formally enshrined in the treaties.*

*Recommendation 32*

*The AIV warns against coordination that cannot be enforced. Programming, notifying or consulting with others on policy intentions, and naming and shaming are vital for imbuing important projects with a certain amount of credibility.*

*Recommendation 33*

*The AIV recommends introducing an independent test, along the lines of the model developed by the Dutch Administrative Burden Advisory Board, to assess the administrative burdens resulting from the Commission's legislative proposals.*

**List of abbreviations**

<b>CFSP</b>	Common Foreign and Security Policy
<b>EC</b>	European Community
<b>EEC</b>	European Economic Community
<b>EMU</b>	Economic and Monetary Union
<b>ESDP</b>	European Security and Defence Policy
<b>EU</b>	European Union
<b>IIA</b>	Interinstitutional Agreement
<b>JHA</b>	Justice and Home Affairs
<b>PJCC</b>	Police and Judicial Cooperation in Criminal Matters

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