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**INFORMATION NOTE**

*Subject:* ***IGC 2000****: Contribution from the Dutch Government:*
*– An agenda for internal reforms in the European Union*

Delegations will find attached for information a document from the Dutch Government concerning the Intergovernmental Conference on institutional reform.

**ANNEX**

# THE IGC 2000: AN AGENDA FOR INTERNAL REFORMS IN THE EUROPEAN UNION

## 1. The context of the IGC 2000

### 1.1. A new IGC

The Cologne European Council decided that in early 2000 an intergovernmental conference (IGC) would be convened to discuss the institutional reform of the European Union. This IGC must conclude during the French Presidency by the end of 2000. The European Council has asked Finland, current holder of the Presidency, to write a report, for use at the Helsinki European Council, on possible solutions to the institutional problems that could not be resolved in Amsterdam. These include:

– the size and composition of the Commission;
– weighting of votes in the Council; and
– increased use of qualified majority voting in the Council.

It was also agreed in Cologne that treaty amendments concerning the institutions of the European Union can be discussed, if they relate to the above-mentioned issues or are needed for the proper implementation of the Treaty of Amsterdam.

On 21 May 1999, the Dutch Government sent the Lower House of Parliament an initial policy memorandum on the institutional reforms. That document outlined the background to the conference, the possible scope of the negotiations and the preparation and scheduling of the IGC. The Government promised to draw up a second memorandum after the Cologne European Council, that would consider in further detail the agenda for the conference and the institutional reforms favoured by the Netherlands.

This memorandum clarifies the position of the Netherlands in the preparations for the IGC. It consists of two parts. The first discusses the consequences of enlargement for the European Union and lists the Netherlands' points of departure for the IGC. The second discusses the scope for institutional reform. The memorandum is not confined to the three issues pinpointed in Cologne; it also suggests other reforms bearing on enlargement and on the implementation of the Treaty of Amsterdam.

### 1.2. Consequences of enlargement for the European Union

The European Union is changing rapidly. 1 January of this year saw the start of EMU. In late March in Berlin, agreement was reached on a new financial plan and on reforms of the common agricultural policy. The Treaty of Amsterdam came into force on 1 May. The Cologne European Council in early June spurred the development of a European Security and Defence Policy (ESDP). Europol has been operational since 1 July. Last month in Tampere, agreement was reached on the main lines of a European approach to the asylum issue and on closer police and judicial cooperation.

At the same time, the enlargement process has reached a crucial phase. Countries in Central and Eastern Europe and the new members from the Mediterranean region will soon belong to the Union. This development has tremendous historical significance. The division of the continent during the Cold War, the effects of which we still feel today, can be put behind us for good. But this will not happen automatically. The next enlargement will be qualitatively different from previous ones. The applicant countries are both greater in number and more diverse. They will change the character of the Union. After enlargement, the EU will be not only geographically larger, but also more heterogeneous. This raises a fundamental question: how can we ensure that the enlarged Union will have the ability to adapt and take decisions promptly? To ignore this question is to go into the enlargement process blindfolded.

Two years ago, it was decided in Amsterdam that the institutional structure of the Union would be re-examined before the next enlargement. The Protocol on the institutions with the prospect of enlargement of the European Union annexed to the Treaty of Amsterdam distinguishes between an enlargement involving up to five new Member States and an enlargement leading to an Union of more than twenty countries. In the first case, reforms would only need to address the composition of the Commission and the weighting of votes in the Council, while in the second case a much more fundamental institutional reform would be called for.

The Government believes that this distinction is no longer relevant. In March 1998 negotiations began with six applicant countries and this number is expected to be increased to twelve at the Helsinki European Council. Of course, this does not mean that all these countries will enter the Union at the same time. There must be some differentiation on the basis of objective criteria. But the enlargement process has accelerated since the Luxembourg European Council. The Government supports this acceleration wholeheartedly. The distinction in the Amsterdam Protocol can no longer be maintained. The Government favours a wide-ranging agenda for the next IGC. This will enable the EU to prepare adequately for enlargement and make it unnecessary to interrupt the enlargement process to hold a second IGC soon after.

Clearly, the dynamics of the enlargement process force the Member States to adopt an ambitious approach to institutional questions. The coming IGC must implement reforms that will clear the way for enlargement of the Union to more than twenty countries. They must ensure the proper functioning of the Union in the short term and beyond and in doing so send a clear, positive signal to the applicant countries. This is no time to mince words. The European Council's message from Helsinki must state unequivocally that the European Union will be ready for enlargement after the forthcoming IGC. In the memorandum on Union enlargement, 'Helsinki and beyond' soon to be presented to the Lower House, the Government discusses the enlargement process in greater detail.

### 1.3. Points of departure for the Netherlands at the next IGC

As the Government indicated in its memorandum of 21 May 1999, the Netherlands considers it important to strengthen the European Union's decision-making power and its democratic legitimacy. These qualities are essential given the eventual prospect of nearly doubled EU membership, as this unprecedented enlargement will have fundamental consequences for the future structure of the Union. Therefore, it is necessary to:

– improve all aspects of EU government and make its structure more flexible; and
– make the EU's governance more democratic and transparent.

The European Union's institutions were designed in the 1950s for a community of six states. The Union now has fifteen Member States and its membership will grow significantly in the next few years. A Union of more than 25 countries has become conceivable. The Union's institutions have not changed significantly since the 1950s. Some parts of the institutional framework are beginning to feel the weight of both increased membership and the many new tasks and responsibilities they have taken on. The decision-making processes within and among the institutions are under strain. This is why reforms are needed. The effectiveness of the European Union depends on the proper functioning of its institutions.

In the future, increasing political, cultural and economic diversity within the European Union will make it more difficult for all the Member States to jointly introduce new policy at the same moment. For this reason, the European Union must offer its Member States more opportunities for differentiated cooperation. This will make it possible for further integration to take place at the appropriate pace and in the desired manner. If such cooperation cannot be achieved within the framework of the Union, the risk arises that it will take place outside that framework. Closer cooperation is already one of the fundamental principles of the Treaty of Amsterdam. The task now before us is to simplify the complex conditions, procedural and otherwise, for initiating cooperation of this kind. Of course, we should make very sure that such cooperation is not detrimental to the Treaty framework, the acquis communautaire, the rights and powers of non-participating Member States etc. Closer cooperation could in principle take place between any countries in the Union and would not be restricted to particular constellations of countries. This approach would promote European integration.

The Government also believes the European Union has lessons to learn from the recent inter-institutional crisis. The democratic legitimacy, transparency and integrity with which institutions operate must be improved. In practice, attention must be given to the responsibility of individual Commissioners, the strengthening of the European Parliament's co-legislative and monitoring powers, the speed of the European justice system and the quality of fraud prevention. Tackling these problems with the operation of the institutions could make the Union more intelligible to its citizens. For this reason as well, the Government believes that the IGC should address more than merely the Amsterdam 'leftovers'.

The Government is aware that its views are as yet shared only by a minority of Member States and the Commission, backed up by the Dehaene report. A large majority of Member States favour an IGC agenda limited to those issues left unresolved in Amsterdam, for various reasons:

– Some Member States argue that the IGC only has enough time to address the issues remaining from Amsterdam. These countries believe that the size of the Commission, the weighting of votes and majority decision-making are such sensitive issues that all available time should be spent on them.

– Another important argument for a less ambitious IGC (a 'quick fix') is some Member States' concerns about public opinion. They feel their people would not accept any further transfer of national sovereignty to Brussels.

– For many Member States, fears that enlargement would be delayed are another important reason to keep the IGC agenda short. These countries believe that if the IGC takes on too many difficult questions, it will be almost impossible to finish before the deadline of the end of 2000. The fewer topics discussed, the easier it will be to end the conference quickly, clearing the way for the first round of accessions to the Union.

Although the Netherlands believes the IGC should not be limited to the three issues left unresolved in Amsterdam, the agenda should not be unmanageable. To avoid this, it could be decided at Helsinki that the IGC:
– will be concluded by the end of 2000;
– will not transfer any powers from Member States to the Union;
– will not in principle discuss policy dossiers, with the exception of those relating to parallel processes or the ESDP, and will emphasise institutional issues; and
– will not alter the current balance among the institutions.

In summary, the Netherlands believes the IGC should address the following issues:
– the three issues enumerated in Cologne;
– topics related to these issues, such as codecision and the individual responsibility of Commissioners;
– issues crucial to the proper functioning of the Union in the light of the Treaty of Amsterdam, such as the division of labour in the Court of Justice and sound financial control and management;
– conditions on differentiated cooperation between Member States within the framework of the European Union; and
– the institutional and legal provisions related to the ESDP.

With an agenda along these lines, the IGC will directly or indirectly screen the operation of all Union institutions. The Government will consistently assess the proposals discussed in the IGC for their impact on (a) strengthening European institutions and decision-making processes under strict legal, financial and democratic supervision and (b) maintaining Dutch influence in the European Union.

### 1.4. Parallel processes

Before delving deeper into the issues that should be addressed in the IGC, the Government would point out that other reforms are also being discussed in the Union. These issues are in principle separate from the IGC, but may be addressed later in the conference.

Firstly, institutional reforms *not* requiring amendments to the Treaty are under discussion. For instance, the Commission is working on improving the implementation and administration of Community policy. This will involve changes in the organisation of the Commission. Commissioner Kinnock will present plans for these reforms in early 2000. The Council is also currently discussing its own operation on the basis of a report by former Secretary-General Trumpf. These discussions could lead to a variety of measures that could, for instance, make Council meetings more efficient.

Secondly, the Cologne European Council decided that a Charter of Fundamental Rights should be drawn up for the European Union. A diverse group will work together to compose it. The text of the charter is to be completed by the end of 2000. It must then be decided whether the charter should be incorporated into the Treaty, and if so, how. In making that decision it will be important to avoid undermining the ECHR in any way.

Thirdly, the European Security and Defence Policy is being developed. The European Council will take further decisions on this policy in late 2000. The content of this policy is in principle to be determined outside the IGC; in this sense, the IGC and the development of the ESDP are parallel processes. It is clear, however, that the development of the ESDP will also have consequences for the institutional structure of the European Union. Decisions about these institutional and legal aspects of the ESDP will require amendments to the Treaty and should therefore be discussed in the IGC. Section 2.10 of this memorandum addresses these issues in more detail.

These parallel processes will not be discussed in the remainder of this document. The Government will inform the Lower House more fully about them at the appropriate time. The second part of this document discusses in greater detail the issues on the agenda proposed by the Government for the forthcoming IGC.

## 2. The elements of the agenda

### 2.1. The Commission

*Analysis*
A European Union of twenty-five states is unthinkable without a strong Commission. Enlargement will give the pivotal role of the Commission even greater significance. The Commission is a central element of all aspects of Union governance. It is the initiator of European legislation, the Guardian of the Treaties and the body that implements Community decisions. In an enlarged Union in which diversity, economic and otherwise, and a wider range of interests make it more difficult to agree on policy, the Commission will bear greater responsibility for ensuring that the Union takes unified action.

The Commission currently consists of twenty Commissioners. If new Member States accede to the Union, they will want to supply members to the Commission. This would increase the number of members. It is questionable whether the Commission's work could be divided effectively among so many Commissioners. Some believe there are already too many portfolios. It should be said that a Commission with more than twenty members would still be capable of doing its work. Some Member States have governments with more than that number of members. Still, continued enlargement of the Commission brings the risk of decreased unity.

Besides the criterion of *efficiency*, which may set an upper limit to the number of Commissioners, the criterion of *representativeness* also plays a central role. Many Member States think it crucial that they have a 'representative' in the Commission.

*Possible reforms*
In Cologne, it was decided that the size and composition of the Commission will be addressed in the IGC. Article 1 of the Protocol on the institutions with the prospect of enlargement of the European Union annexed to the treaty of Amsterdam describes one possible way of reducing the size of the Commission. Under certain conditions, the five largest Member States are prepared to give up their right to nominate a second member of the Commission. If agreement can be reached on reweighting the votes of the Member States in the Council - an issue discussed in greater detail below - Germany, the United Kingdom, France, Italy and Spain are prepared to give up their second Commissioners.

The IGC will probably opt for this method of reducing the size of the Commission. Every Member State will be allowed to supply one Commissioner, so that the enlargement of the Commission will proceed in parallel with that of the Union itself. The fact is that every Member State, including the Netherlands, places great importance on supplying a Commissioner of its own. For the time being, the government is willing to accept this solution.

If it eventually proves necessary to discuss limiting the size of the Commission, the Government will formulate stringent conditions for such a reduction.

## 2.2. Weighting of votes

*Analysis*
In the European Union, the Council takes the most important decisions, often in combination with the European Parliament. Every Member State has a representative in the Council. The accession of new Member States to the Union will lead to commensurate increases in the membership of the Council. The members of the Council are equals. Every minister may speak and the Presidency of the Council is held by each Member State in turn. When the Council takes decisions by unanimous vote or by absolute majority, every Member State has one vote.

Still, the size of the Member States sometimes plays a role in the Council. This difference is expressed formally in article 205 EC. This article lays down a system for the weighting of Member States' votes in decisions reached by qualified majority. In QMV procedures, there are 87 votes in the Council and 62 are needed for a decision. The Member States have different numbers of votes. Germany, the United Kingdom, France and Italy have 10 votes each. Spain has 8. The Netherlands, Greece, Belgium and Portugal each have 5, Sweden and Austria each have 4, and Finland and Ireland each have 3. Luxembourg has 2. The smaller Member States have a great deal of voting power in proportion to their population.

With enlargement, new Member States will have to be assigned a certain number of votes for the purposes of qualified majority voting. Most applicant countries have relatively small populations. With the exception of Poland and Romania, the countries with which negotiations are planned or in progress have significantly smaller populations than the Netherlands. An increase in the number of small Member States will alter the balance between large, medium-sized and small Member States in the Council. If the current weighting system remains in place, the relative underrepresentation of the large Member States will grow more extreme. These Member States want additional voting power, partly in return for giving up their second Commissioners.

*Possible reforms*
The reweighting of votes will be approached cautiously in the IGC. The large Member States will want more votes and the small Member States will want to minimise their loss of voting power. This issue could provoke heated debate. The Council must have the ability to take decisions quickly and efficiently. Clearly, changes to the system for weighting votes in the Council must do justice to the relative demographic situations of the Member States.

Article 1 of the Protocol on the institutions with the prospect of enlargement of the European Union annexed to the treaty of Amsterdam mentions two possible ways of adapting this system:
1. introducing a dual majority system; or
2. reweighting the votes.

A dual majority could be based on (a) a specified proportion of the Member States' total number of votes and (b) a specified proportion of the Union's population (60%, for instance). During preparations for Amsterdam, it became clear that most Member States were unenthusiastic about the use of a dual majority in the Council, as it would complicate decision-making. It should be kept in mind that the impact of a dual majority system on the effectiveness of the decision-making process would depend on the specific proportions associated with each of the two systems.

Most countries will probably favour a reweighting of votes, the second option mentioned in the Protocol. In the interest of keeping the system of majority decision-making as clear and simple as possible, the Netherlands too would prefer to investigate this option first. Population should be the deciding factor in the reweighting of Member States' votes. The most populous states could receive the same number of votes as now, multiplied by a certain factor. The smaller Member States could receive their current number of votes multiplied by a somewhat smaller factor. This would preserve the balance between large and small Member States after enlargement. Since in a significantly larger Union the population of the Netherlands would be above average, a relative increase in the Netherlands' voting power in the Council is without a doubt objectively justified.

### 2.3. Extending the application of qualified majority voting

*Analysis*
In an enlarged Union, decision-making in the Council will be more likely to encounter barriers. This is certainly true of the policy areas in which the Council takes its decisions by unanimous vote. In a Council representing more countries, the probability that one or more of them will not support a particular proposal is greater. Although the Council only rarely actually votes, experience has shown that Member States take a more constructive stance when a vote is to be held. For this reason, efforts are under way to bring provisions that currently call for decision-making by unanimous vote under a qualified majority voting regime.

A wide array of provisions currently call for decision-making by unanimous vote: some that are constitutional in nature, concerning topics such as treaty amendments, policy on official languages and accession; certain types of decisions by the Council that must be ratified by the Member States; articles describing appointment procedures; and other provisions of diverse kinds. Second and Third Pillar decisions must generally be made by unanimous vote, and First Pillar decisions also require unanimity in many policy areas.

It will be recalled that increasing the scope of QMV decision-making was also an objective of the last IGC. The new Treaty brought fourteen provisions under the "QMV rule". But most of these were new provisions added to the Treaty in Amsterdam. Only three existing provisions requiring unanimity could be transferred to qualified majority voting. Given the sensitive nature of the provisions that call for decision-making by unanimous vote, one might wonder whether the next IGC will be able to do any better, and if so, how.

*Possible reforms*
Most countries want to increase the scope of qualified majority voting. The main question is how all Member States will manage to agree on a list of provisions to be brought under the QMV rule. A working method is under consideration that could create an objective basis for the transition from unanimous to QMV decision-making.

The point of departure of such an approach might be that as a general principle all decision-making by unanimous vote should make way for qualified majority voting but that certain exceptions could be made on the basis of general criteria. These criteria could be used to test provisions currently requiring unanimity. Qualified majority voting would not apply to any provision satisfying these pre-determined criteria. The following are examples of criteria that might be considered:
– the provision bears on constitutional matters;
– the provision is intergovernmental in character;
– the provision concerns decision-making processes that require national ratification;
– the provision allows for exceptions to the acquis of the internal market.

The Netherlands favours the formulation of a working method of this kind. It would mean that certain decisions would continue to require unanimity. Examples include the Council decision on own resources, which requires ratification by the Member States, and decisions which fall under the intergovernmental Second and Third Pillars.

A criteria-based approach, however useful, cannot serve as a *deus ex machina*. In the process of determining the criteria, participants will look carefully for opportunities to exclude certain articles from qualified majority voting or bring certain articles within its scope. The Government does not believe this working method will suffice. A second track is necessary, and for this, an analysis should be made of the policy areas that will require more majority decision-making in the future.

These analyses of future policy must take full account of the consequences of enlargement for the Union and the need to preserve the Council's effectiveness. Which provisions in those policy areas currently requiring unanimity should be brought within the scope of qualified majority voting and which should not? This approach could help identify a number of other categories that should be exempted from qualified majority voting.

In the debate on majority decision-making, the Government will pay close attention to its potential financial and economic consequences. When decisions have serious financial consequences, unanimity would still be required. The Government does not wish to rule out the possibility that it will be necessary - partly in light of the analyses of future policy alternatives - to reformulate some of the current provisions requiring unanimity. By re-structuring the articles, one could bring some parts of a policy area within the scope of qualified majority voting and exclude the rest.

### 2.4. Democratic scrutiny

*Analysis*
The European Union is founded on the principles of liberty, democracy, and respect for human rights and the rule of law. Now that the Union is expanding, these foundations must be strengthened. The people of the Union must be able to identify with its policies. To this end, the EU's decision-making should be subject to adequate parliamentary codetermination and scrutiny. National and European representatives could and should have more influence on Union policy, in the interest of the Union's democratic legitimacy.

When the Council takes its decisions by unanimous vote, national parliaments bear the primary responsibility for subjecting governments to scrutiny. Each Member State must determine for itself the form such scrutiny should take. It is essential, of course, that parliaments have timely access to the information they need. The fact that national parliaments have primary responsibility when the Council takes decisions by unanimous vote does not affect the duty to consult the European Parliament in those cases as well. This is not yet done consistently.

When the Council takes decisions by majority vote, the European Parliament is primarily responsible for democratic scrutiny. Currently, the European Parliament does not always have the full right of codecision.

– The cooperation procedure is still part of the provisions on Economic and Monetary Union. The Treaty of Amsterdam replaced it with the codecision procedure in all other parts of the Treaty. These provisions were not discussed at the last IGC, as the third stage of EMU had not yet begun.
– In some areas, the Council takes decisions by qualified majority and the European Parliament is only consulted. One important example is decision-making on the Common Agricultural Policy.
– Where budgetary matters are concerned, codetermination by the European Parliament is confined to compulsory expenditure.

*Possible reforms*
The IGC should consider how the position of the European Parliament can be further strengthened. In the Government's opinion, the European Parliament should have the right to consultation whenever the Council takes its decisions by unanimous vote. When the Council decides on legislative proposals by qualified majority vote, the European Parliament should in principle have the right to full codecision. However, the consequences of the duration of the decision-making process must be kept in mind. The cooperation procedure for EMU should be altered, or replaced by the codecision procedure.

In keeping with the wishes of the Lower House, the Government will pursue the abolition of the distinction between compulsory and non-compulsory expenditure. The European Parliament and the Council should in principle have equal powers over total expenditure, subject to the absolute condition that these powers are to be exercised within a clear budgetary framework.

The efforts to expand the scope for majority decision-making in the Council should be directly linked to the efforts to expand the European Parliament's right of codecision. If this right is not accorded to the European Parliament, while the Council is allowed to take majority decisions in certain policy areas, a democratic deficit will arise. The European Parliament should also obtain this right with regard to provisions that already call for majority decision-making in the Council, in cases where it does not possess it already.

### 2.5. Relationship between the Commission and the European Parliament

*Analysis*
Democratic legitimacy should also be strengthened in other ways besides giving the European Parliament the power of codecision in more cases. The European Parliament should also be able to subject the Commission to appropriate scrutiny, as the Commission bears primary responsibility for carrying out Community policy and for EU expenditure.

Many countries are against increasing the European Parliament's influence on European policy. Some feel its expanding powers with regard to legislation, its special role in the budgetary process and the assertive stance it takes towards the Commission already give it considerable influence in practice.

Particularly in an enlarged Union, it is of critical importance to have a stable relationship between the European Parliament and the Commission. Any tensions between these two institutions have repercussions for the entire institutional balance of the European Union. After the crisis of confidence involving the European Parliament and the Commission that led to the Commission's resignation in the spring of 1999, this issue is well worth addressing in the IGC.

During this crisis it came to light that voluntary *collective* resignation had no sound basis in the Treaty. The article (215 EC) on which the Commission based its resignation discusses only the replacement of individual Commissioners.

In the course of the crisis, it also became clear that when the European Parliament believes one Commissioner is not performing his or her duties properly and that Commissioner is unwilling to resign, the entire Commission can pay the price. This is a direct consequence of the fact that the European Parliament can force only the Commission in its entirety to resign and not individual Commissioners. For that reason, the new President of the Commission, Romano Prodi, asked all prospective Commissioners to sign a letter declaring their willingness to resign should he request that they do so. All the Commissioners have done so, but this construction is without any basis in the Treaty. That is why the IGC should establish in law the individual responsibility of members of the Commission.

In determining the procedure for appointing a new Commission, the question arose as to whether an interim Commission should be appointed to serve out the term of the Santer Commission or whether the new Commission could in principle be appointed for five and a half years. The Treaty does not provide for the dissolution of the European Parliament when the Commission accepts a motion of censure (art. 201 EC) or its members decide to resign collectively (art. 215 EC). The question of whether the dissolution of the European parliament is desirable in such a case could therefore be raised.

*Possible reforms*
For the sake of the overall balance between the EU's institutions, the relationship between the European Parliament and the Commission should not be altered significantly. Nevertheless, the Government believes a number of elements in the relationship between the two institutions require discussion in the IGC.

First of all, the individual responsibility of members of the Commission should be better defined. The crisis of confidence between the European Parliament and the Commission arose partly because the Treaty did not include a mechanism for forcing an individual Commissioner to stand down. The IGC should consider how best to formulate the individual responsibility of the members of the Commission.

This could be accomplished in two ways. The European Parliament could be granted the authority to dismiss individual Commissioners directly. Alternatively, the power to dismiss or propose dismissal could be granted to the President of the Commission. In the choice between these two options, the balance between the institutions should play an important role. In any case, the Government believes a clear lack of support for an individual Commissioner in the European Parliament should have consequences. The most obvious political solution would seem to be granting the European Parliament the right to dismiss Commissioners directly. The disadvantage of this option is that it could compromise the stability of the Commission. The following, more indirect, option might be preferable. If it becomes clear that an individual Commissioner no longer has the support of the European Parliament, the President of the Commission would have the power to request the person's dismissal. This request would then be approved by the European Council.

Another issue worthy of consideration is whether a crisis of confidence involving the European Parliament and the Commission should have consequences for the European Parliament. If Parliament dismisses the Commission in its entirety, or if the Commission itself decides to resign as a result of political pressure exerted by Parliament, the European Parliament remains, according to the Treaty. The Government believes the dissolution of the European Parliament might conceivably be desirable in these two situations.

The Netherlands believes an amendment to the Treaty addressing this matter would have two important advantages:

– the dissolution of the European Parliament would necessitate new elections, thereby giving voters a chance to express their opinion and become more closely involved in EU political debate;
– the European Parliament would know that it could not increase pressure on the Commission without jeopardising for its own position. This would benefit the balance between the two institutions.

Finally, if the Commission resigns, it would be best if the newly formed Commission served out not only the term of their predecessors, but also a full five-year term of their own.

### 2.6. The Court of Justice

*Analysis*

The European Union is a community based on law, characterised by enforceable legislation which is subject to review and its own system of legal protection. The Court of Justice is the organ of judicial oversight within the EU. The strengthening of the ECJ by the Treaty of Amsterdam is a welcome development. Its jurisdiction has been expanded to include immigration, asylum and visa cases. The Court has also been given jurisdiction in a number of Third Pillar agreements.

The Court of Justice is not currently equipped to carry out all these tasks properly. It is struggling with an enormous workload, as there is a steady increase in the number of cases brought before it. The Court requires ever more time to dispose of each case. This trend, which has existed for many years, is particularly objectionable in preliminary proceedings. It currently takes twenty-one months on average before a national court receives a preliminary ruling. Especially in cases involving the interests of natural persons, this is an unacceptably long period. It could make national courts reluctant to request preliminary rulings and thereby endanger the uniform interpretation of Community law. (It may be added that national courts have a responsibility to carefully consider whether it is necessary to request a preliminary ruling before doing so.)

The enlargement of the European Union could exacerbate these current problems. After all, national courts in the new Member States will also want to request preliminary rulings from the Luxembourg Court. Attempts to reconcile national provisions with European law could prompt further requests. Direct appeals related to transitional periods for, exceptions to and deviations from the internal market (agreed in conventions on accession) can also be taken to Luxembourg.

The Court of Justice itself bears primary responsibility for the proper organisation of its work. Within the current treaty framework there is scope for the Court itself to improve its performance. For instance, it could have more cases heard by a small division instead of the full bench. It could make more use of accelerated proceedings in which it rules on simple preliminary issues that have been dealt with by the Court before. It is also crucial to reduce backlogs due to insufficient translation capacity by increasing the Court's budget to allow it to expand its translation service.

The enlargement of the Union will lead to an increase in the number of judges. The Netherlands is firmly opposed to a reduction in the number of judges at the Court of Justice. Besides wide-ranging and in-depth knowledge of European law, the ECJ also needs expertise in the national law of the Member States; for this reason, it should include judges from the new Member States. The number of judges in the Court of Justice and the Court of First Instance (as well as the number of Advocates-General in the Court of Justice) can be increased by unanimous decision of the Council, pursuant to article 221 EC.

*Possible reforms*
The Netherlands is of the opinion that the performance of the Court of Justice and the Court of First Instance needs improvement in several areas. A coherent package of measures is needed to maintain and increase the quality of judicial oversight and the administration of justice in the Union.

The Netherlands supports the ECJ's proposal to increase the number of judges in the Court of First Instance by six. This measure could swiftly reduce backlogs. With a new division of labour between the two Courts, the Netherlands believes the number of judges in the Court of First Instance should be increased even further. The Court of First Instance always adjudicates in divisions. With a larger number of judges, more divisions could be formed and the cases brought before the Court could be disposed of faster.

Further measures to improve the performance of the Court of Justice cannot be implemented within the current Treaty. Such measures will therefore need to be discussed in the IGC.

The Netherlands would like to grant the Court of Justice and the Court of First Instance the authority to amend their rules of procedure (art. 225 and 245 EC). Currently, each amendment requires the unanimous approval of the Council. Given the areas covered by the rules of procedure, the two courts could be given the independent competence to make technical changes. If necessary, the more significant provisions could be incorporated into the Statute of the Court of Justice. If there is inadequate support in the IGC for the transfer of these responsibilities to the Court of Justice, the Council's approval should at least be determined by qualified majority vote.

The growing number of judges in the ECJ - there may be twenty-five in a few years - means that it is becoming less and less practicable to have cases heard by all of them. The Treaty already states that the Court may appoint divisions of three, five or seven judges from its members. A provision stating that cases will in principle be heard by divisions (and therefore by at most seven judges) is called for. To guarantee the consistent dispensation of justice, the judges should rotate at set intervals. Member States and institutions would no longer have the option of requesting that a certain case be heard by the full bench. The Court itself, however, would retain this option for use in exceptional cases.

In the opinion of the Netherlands, it is not necessary for an Advocate-General to submit an advisory opinion in each case. In relatively simple cases - a category that should obviously be defined more precisely - this could save time. In such cases there is no particular need for the Advocate-General to submit an advisory opinion.

The Court of Justice's most serious problems are caused by the increasingly large number of requests for preliminary rulings it has to deal with. Even if all the above measures are carried out, the Court will probably be incapable of handling this flood of requests on its own in the long run and will probably have to relinquish its monopoly on preliminary rulings. A better division of labour between the Court of Justice and the Court of First Instance could be the solution.

The competence to make preliminary rulings could be transferred to the Court of First Instance. This would substantially alter the latter's role, which has up to now been to settle disputes. Certain prerequisites for this transfer are of crucial importance. The Court of First Instance's capacity, in both qualitative and quantitative terms, to assume this competence would have to be established in advance. If the Court of First Instance were to decide that a particular request for a preliminary ruling had special relevance to legal uniformity, legal protection or the development of law, it could transfer the request directly to the Court of Justice. Obviously, another necessary prerequisite would be the opportunity to appeal the preliminary rulings of the Court of First Instance to the Court of Justice. This possibility of appeal would be open to institutions, Member States and the Advocates-General at the ECJ.

### 2.7. Financial management

*Analysis*
The EU's financial management is in need of improvement. The Commission bears final responsibility for putting the Community budget into effect. Because agencies in the Member States are responsible for most expenditure and most revenue, sound financial management is only possible with the full cooperation of the Member States. The Treaty of Amsterdam requires that Member States cooperate with the Commission to ensure that allotted appropriations are used in accordance with the principles of good financial management. It also states that the Member States must take the same measures to combat fraud with Community funds that they do in the case of fraud endangering their own financial interests.

*Possible reforms*
Given these provisions, the Government believes consideration should be given to making cooperation between Member States and the Commission compulsory instead of optional. The Member States' systems for the management and control of Community expenditure should satisfy uniform requirements. (The Commission could propose such requirements pursuant to art. 280, para. 4 EC.) If the Commission were to believe that a Member State's management, accountability or auditing procedures were inadequate or had not been fully applied to Community expenditure, the Commission would be able to request a judgment from the Court of Justice under the terms of art. 226 EC. The Commission would be required to issue a yearly report on its supervision of the quality of management and control systems in the Member States.

The Government is also of the opinion that the anti-fraud agency OLAF (*Office Europeén de Lutte Anti-Fraude*), which recently acquired a place within the Commission, should become an independent agency. This would help safeguard its impartiality and the quality of its investigations of irregularities involving EU funds. For the record, the Government would point out that OLAF itself will be monitored by a supervisory board appointed by the European Parliament.

## 2.8. The Court of Auditors

*Analysis*
Good external financial control is essential to the financial management of European expenditure. The Court of Auditors investigates the legality and regularity of expenditure. Every year, it submits a statement of assurance as to the reliability of the European accounts to the Council and the European Parliament. This statement plays an important role in the European Parliament's decision, at the Council's recommendation, to grant discharge to the Commission for the implementation of the budget. The statement is general in nature, however, and does not provide the Court of Auditors with enough material to make a specific evaluation of any single operational or geographical area of Community activity. The Government will argue that the Court of Auditors should produce statements on specific policy areas to supplement the general statement of assurance. These sectoral statements would provide a better picture of the financial management of Community funds.

Given the nature and diversity of the flows of European funds and the geographical extent of the Union, only limited external financial control is possible. The Treaty (art. 248, para. 3 EC) states that the Court of Auditors shall conduct its audits in liaison with national audit bodies or, if these do not have the necessary powers, with the competent national departments. Variations in the powers and methods of the national audit bodies sometimes hamper these cooperative efforts. The enlargement of the European Union will not make audits of Community expenditure any simpler. The Court of Auditors will have to do its work in even more countries, with varying traditions, methods and organisations in the field of financial control. For this reason, the Government believes the IGC should look into ways of improving cooperation between the Court of Auditors and national audit bodies. Improvements should focus on making external audits more systems-based and efficient.

The enlargement of the European Union will inevitably impact on the organisational structure of the Court of Auditors. The Court currently has fifteen members. Although the Treaty is silent on this point, at present one member is appointed from each Member State. New Member States will also want the Council to appoint their 'representatives' to the Court of Auditors.

*Possible reforms*
The Government's proposal for improving cooperation between the Court of Auditors and national audit bodies is as follows:

– a consultative committee should be established, consisting of the Presidents of the Court of Auditors and the national audit bodies. This committee should meet regularly to discuss integration of tasks and streamlining of the approach to audits. The Treaty provision establishing the committee could also stipulate the annual presentation of a report to the European Parliament and the Council on cooperation between the European Court of Auditors and national audit institutions;

– the Treaty should require Member States to grant the national audit institutions the same powers as the European Court of Auditors with regard to audits of flows of Community funds in the Member State in question. This would make the national audit institutions more independent and have a positive effect on cooperation between national audit institutions and the European Court of Auditors;

– the Treaty should require the legislature to specify the powers of information and audit of the Court of Auditors in more detail. The Council and the European Parliament could set down these powers in a Regulation based on a proposal by the Commission, after receiving the opinion of the Court of Auditors. This Regulation could serve as a step towards more uniform methods of auditing Community expenditure and revenue.

The Treaty of Amsterdam (art. 230 EC) granted the Court of Auditors the right to lodge an appeal with the Court of Justice in order to protect its prerogatives. The Government believes the Court of Auditors should also be granted the power to lodge an appeal with the Court of Justice against a Member State that fails to comply adequately with its requests for information.

In the light of the growing membership of the Court of Auditors, an option worth considering would be the insertion into the Treaty of a provision requiring the Court of Auditors to distribute its tasks among 'divisions' of three, five or seven members. In the Government's opinion, the position of the President of the Court of Auditors should in any case be strengthened. The Treaty should stipulate that technical and organisational aspects of the Court of Audit's operations shall be determined by that Court's members on the basis of a proposal by the President.

The Government will work out further details of these proposals for reforms of the Court of Auditors and its cooperation with national audit bodies in consultation with the Court itself.

## 2.9. Closer cooperation (flexibility)

*Analysis*
The enlargement of the European Union will greatly increase its political, economic and cultural diversity. The debate on the consequences of enlargement for European integration has a long history. Widening has been often been contrasted with deepening. Now we must reconcile the two by complementing widening with the possibility of deepening where needed. If necessary, this option could in some cases be confined to a limited group of Member States.

Several obstacles to such a reconciliation must first be overcome:

- while deepening involving a limited group of Member States is possible on the basis of the articles on closer cooperation in the Treaty of Amsterdam, strict conditions are set in order to safeguard the Union acquis and the rights of non-participating Member States. In combination, however, these conditions constitute a formidable barrier to closer cooperation. For instance, groups entering into closer cooperation must consist of a majority of Member States. Moreover, any Member State may ask that the proposed cooperation be referred to the European Council, citing important reasons of national policy. Because the European Council must decide by unanimity, this gives the Member State calling in the Council the opportunity to veto the plan for closer cooperation. This format for closer cooperation may be feasible in a fifteen-member Union, but it is far from clear that the flexibility provisions laid down in Amsterdam will suffice in a Union of twenty or more Member States. A number of Member States have already proposed reopening the debate on closer cooperation in the IGC, in the light of the forthcoming enlargement. The accession of a large group of countries at a much lower level of economic development could affect the operation of the internal market. As a result, some current Member States might insist on further integration in flanking policy areas;
- accession is usually an 'all-or-nothing' process; in principle, applicant countries must accept all the obligations of EU membership. Countries that do not yet fully comply with the acquis communautaire may only accede by means of derogations and transition periods, and even partial membership is not possible for countries still far from compliance with large parts of the acquis;
- a final problem is that closer cooperation is constrained by the current Treaty provisions, amendments to which must be ratified by all Member States.

*Possible reforms*
The Netherlands believes reform of the provisions on closer cooperation would both increase the flexibility of the Union and prevent forms of cooperation from developing outside the institutional framework of the Community. Methods of entering into closer cooperation could be reformed to various degrees:
- the provisions on closer cooperation in the Treaty of Amsterdam could be revised;
- applicant countries could be partially integrated into the Union, faster than would otherwise be possible; or
- the Treaty structure could be changed.

The Government recognises the clear need to carefully consider the consequences of any changes made in adapting the flexibility provisions.

The Netherlands and a number of other Member States believe the Amsterdam flexibility provisions in fact provide too little flexibility. This is an argument for revising the strict constraints on closer cooperation between Member States in the IGC. Two elements in particular require discussion:
– the requirement that a least a majority of Member States take part in the closer cooperation;
– the possibility of appealing to the European Council.

In the light of the forthcoming enlargement of the EU, it would also be advisable for the IGC to consider whether the flexibility provisions could also form the basis for accelerated participation in EU cooperation by the applicant countries - whether they could, in other words, make possible a kind of 'differentiated membership' of the European Union. These provisions could also clear the way for less developed applicant states to accede to all or part of the European Union earlier than expected. Given the anticipated dynamic of the enlargement process, that could be crucial in the coming years, if only to promote political stability in the countries in question. The major advantage would be that the dividing lines within Europe would be less clear-cut.

In order to ensure that future Treaty amendments do not founder early on because all the Member States must ratify them, and to eliminate the need to rush from one IGC to the next, a fundamental change could be made in the Treaty structure. Eventually, the Union might need a basic treaty which would incorporate the existing Treaties. This Union Treaty would have to encompass the Union's fundamental objectives, legal principles, institutional structure and decision-making procedures. Of course, it would also need to contain a procedure for establishing closer cooperation between Member States. Amendments to this Treaty would have to be ratified by *all* Member States.

The various policymaking powers of the Union could be brought together in one or more component treaties, deriving from the Union Treaty. Amending these treaties would need to be relatively easy. In other words, the approval of every Member State should not be necessary for amendments to the component treaties to enter into force.

### 2.10. European Security and Defence Policy (ESDP)

The conclusions of the Cologne European Council have prompted consideration of suitable powers and instruments to enable the European Union to become active in conflict prevention and crisis management. The Government sent Parliament a policy document on this issue on 29 October 1999, in which it indicated that the development of a European Security and Defence Policy will require amendment of the Treaty. The Government believes that the institutional and legal aspects of the ESDP should be on the agenda for the next IGC. This is also in the interests of an approach that would safeguard the coherence of the Union's external actions within its institutional structure. The points listed below are among those that, in the opinion of the Government, demonstrate the need to amend the Treaty.

First of all, the establishment of a permanent Political and Security Committee (PSC) would need a basis in the EU treaties. This committee's task would be to put its political and military expertise at the Council's disposal. In particular, it would be advisable to establish in clear terms precisely what responsibilities the new committee would have if the European Union were to lead a crisis management operation. One factor to be considered is the role of the PSC in directing the implementation of Council decisions. Another is the relationship between the responsibility of the PSC and that of the Permanent Representatives Committee (COREPER) and other committees. It appears, therefore, as though it will be necessary to adapt article 207 EC (on COREPER), article 18 EU (on the High Representative for the CFSP) and article 25 EU (on the Political Committee).

The expectation is that a Military Committee will be established. The seat and function of this institution will have to be laid down in the Treaty. It will need a military support staff. The Treaty will need to make the organisational status of this staff clear, in connection with its financing and related issues; it could come under the General Secretariat of the Council.

Currently, article 17 EU states that the Union will avail itself of the WEU to elaborate the defence implications of the CFSP. In the new structure, the role of the WEU will change drastically. This will have consequences for that part of the current Treaty article discussing the WEU. Direct contacts between the EU and NATO will need to be regulated. The close ties between these organisations will need to be given a firm basis in the Treaties and possibly in accompanying protocols and agreements. These documents should also clarify the relationship between the European Union and the European non-EU NATO member states. In particular, they should clearly establish what decision-making powers the latter will have in relation to EU-led operations in which they take part.

Furthermore, EU Member States that do not belong to NATO will need to make additional agreements about their involvement in EU-led operations using NATO resources. Such agreements and the relevant procedures will need to be incorporated in a protocol to the new Treaty.

The Netherlands advises further consideration, at the IGC, of the extent to which EU-led operations will require amendment of the financial articles. In particular, amendment of Article 28 EU cannot be ruled out if the Union has to finance permanent non-operational ESDP costs (a military staff, a satellite centre etc.).

Although discussion of these points has not yet led to any concrete results, serious consideration will have to be given to the substantial consequences of the development of ESDP for the institutional structure of the European Union. The Government wishes to make it clear that the involvement of the Commission and the European Parliament in the entire CFSP, as established in the current Treaty, should remain thoroughly safeguarded.

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