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I Introduction

On 12 June 1997, the Minister of Foreign Affairs, the Minister of Defence, the Minister for Development Cooperation and the State Secretary for Foreign Affairs asked the Advisory Council on International Affairs (referred to in the remainder of this report as the Advisory Council) to give its opinion, in the form of a series of two reports, on the enlargement of the European Union. By way of preparation, the Council passed on the request to one of its four permanent committees, namely the European Integration Committee, the members of which are as follows: Professor F.H.J.J. Andriessen (chair), Dr B. Knapen (deputy chair), H.J. Brouwer, W.S.J.M. Buck, Professor W.H. Buiter, Ms A.E.J.M. Cook-Schaapveld, Dr D.J.M. Corbey, Ms N. Kroes, H.C. Posthumus Meyjes, Dr S. Rozemond, P. Scheffer, W.K.N. Schmelzer, Professor A. Szász and Ms M.G. Wezenbeek-Geuke. The following persons also contributed to the draft report: Professor F. van Dam (Development Cooperation Committee), Professor W.J.M. van Genugten (Human Rights Committee), E.P. Wellenstein and Rear Admiral R.M. Lutje Schipholt (ret.) (Peace and Security Committee). Two of the European Integration Committee's official advisers, viz. C. van Rij and R.C.J.M. van Schreven (both from the Ministry of Foreign Affairs) assisted the Committee in compiling the report, as did G.J. van der Zwan (the Secretary of the European Integration Committee). In October 1997, the Advisory Council published a provisional report entitled *An Inclusive Europe*, in which it announced its intention of publishing a second report in which it would examine in more detail various aspects of the process of European integration which were connected with the issue of enlargement. This intention has now been put into effect with the publication of the present report, entitled *An Inclusive Europe II*. The Advisory Council adopted this report on 27 October 1998.

Following the publication of *An Inclusive Europe,* the government presented to parliament a memorandum on the European Commission's proposals in the framework of Agenda 2000. This memorandum (published on 3 November 1997) sets out the government's views on the impact which the accession of new Member States would have on policy areas such as the common agricultural policy, the Structural Funds and the way in which the Union is funded. The present report addresses a number of these issues. *An Inclusive Europe II* does not set out to give a detailed picture of the enlargement of the EU and its consequences, but is instead intended to supplement the conclusions already drawn in the first report, entitled *An Inclusive Europe.* The Advisory Council has chosen to focus primarily on those aspects of enlargement which it believes have not received sufficient attention to date, or in respect of which the Dutch government has not yet formulated a clear standpoint of its own.

The European Union is fostering a growing sense of solidarity between the peoples of its Member States, reflecting the gradual merging of their interests: the Treaty of Amsterdam seeks to strengthen the existing processes of integration and cooperation (albeit at varying speeds for different policy areas); Europe is on the verge of introducing a common currency; the harmonisation of asylum and immigration policies is proceeding apace; and the European Union is ready to cooperate with countries from Central and Eastern Europe, and ultimately to allow such countries to join the Union. A large number of countries have now applied for membership of the European Union. In 1997, the European Council meeting in Luxembourg decided that, whilst all applications for membership would be considered, negotiations would be opened in the first instance only with Cyprus[1], Estonia,

1 The Advisory Council intends to discuss the accession of Cyprus in a report which it is currently preparing on Turkey's application for membership. The present report will not therefore go into the question of Cyprus's position.

Hungary, Poland, Slovenia and the Czech Republic. This report concentrates on the adjustment of the European Union to changing circumstances and its enlargement as a result of the accession of new Member States.

In principle, as *An Inclusive Europe* makes clear, the Advisory Council is a fervent supporter of the enlargement of the European Union. Enlargement is an operation with far-reaching ramifications affecting not simply the current and future Member States of the Union: it opens up prospects of further and more intensive cooperation throughout Europe, especially for those countries which have themselves indicated that they wish to join the Union.

Against this background, this report first discusses the *Economic aspects* of enlargement (Chapter II), before addressing the question of the *Cohesion and Structural Funds* (Chapter III) and the *Institutional aspects* (Chapter IV). The report continues by examining various aspects of the *Common Foreign and Security Policy* (Chapter V), and concludes with a chapter in which the principal *Conclusions and recommendations* are set out (Chapter VI).

II Economic aspects

One of the key aspects in relation to the accession of countries from Central and Eastern Europe is the economic situation in these countries. Whilst the economic situation does not affect the question of whether these countries will be joining, it is an important factor in determining the date on which and the manner in which the new members will join. Because of their legacy from the past (i.e. a state-controlled economy), these countries not only lack experience in running an effective open-market economy in a context of international competition, but are also inadequately equipped to guarantee the success of such an economy in the future.

II.1 Economic and Monetary Union

The countries of Central and Eastern Europe will be joining the European Union at a time when the latter is facing a crucial economic challenge: the transition to the third stage of EMU and the introduction of a single currency, the euro. The situation in the Union will not be homogeneous at the time when the new members accede, in that the economic situation will vary from country to country. The current Member States may be divided into the following three categories (and the accession of new members will accentuate the existing divisions):

1. a fairly large 'hard core' of Member States which have moved into the third stage of EMU (with a common monetary policy pursued by an independent European Central Bank (ECB) and a common currency (the euro));
2. a number of Member States which are members of the European Monetary System (EMS), but which, either because they do not wish to do so or because they have not qualified, are not taking part in the third stage of EMU and will not be sharing a common currency;
3. a group of Member States which are taking part neither in the third stage of EMU nor in the European Monetary System.

The question is: into which of these categories will the new Member States fall, and what requirements will they need to satisfy? By definition, accession means that the new member in question must accept the current *acquis communautaire.* The third stage of EMU, which will have started by the date of accession, forms part of this *acquis communautaire*. Strictly speaking, this means that these countries must be given either 'hard-core status' or a 'derogation'. Giving these countries hard-core status is not feasible for practical reasons, however. In other words, the new Member States will immediately be awarded a derogation exempting them from the requirements under the treaty. These requirements would appear to be relatively tough for new Member States: for example, they must have an independent central bank and they must seek to attain a balanced budget in the framework of the stability pact. A candidate country can satisfy the requirement that it should have an independent central bank by taking the necessary steps in the run-up to accession. The presence of an independent central bank is a valuable tool for enhancing confidence in the government (even without considering the question of the country's accession to the EU), as it offers an opportunity for tightening budgetary discipline. It should be noted that provision is made in the Stability Pact for Member States with a derogation. Such states are required only to try and bring their budget deficits below the 3 percent level, with the ultimate aim of being either 'close to balance' or 'in surplus'. They are not subject to the penalty clause included in the Stability Pact. Accordingly, Member States with a derogation are required to submit convergence programmes rather than stability programmes (as the members of the hard core are).

In addition to the requirements which have to be met as from 1 January 1999 by Member States with a derogation, the requirements relating to the second stage of EMU will continue to apply, of course, during the third stage of EMU. Under the Treaty of Maastricht, a Member State must have taken the following measures in order to qualify for the second stage of EMU:

1. measures to ensure the free movement of capital and payments (Article 73 B);
2. measures prohibiting monetary financing[2] (Article 104);
3. measures prohibiting government bodies from gaining privileged access to financial institutions[3] (Article 104a, paragraph 1);
4. the compilation of (long-term) convergence programmes leading to the required sustainable convergence, particularly in the areas of government finance and price stability. In deciding whether a Member State qualifies for the second stage of EMU, the Council and the Commission assess (on the basis of a report produced by the Commission) the progress made by the Member State in question in terms of economic and monetary convergence and in implementing European legislation on the single market;
5. measures to prevent excessive government deficits (this is an obligation to take all possible steps without actually demanding a specific outcome).

In order to ward off the risk of rising inflation in their own countries, prospective Member States will be required to minimise sharp fluctuations between the euro and their own currencies. One possible means of ensuring exchange rate stability is by pegging the currencies of the prospective Member States to the euro.

From a financial and economic viewpoint, only the condition relating to the liberalisation of capital movements and money transfers provides a degree of latitude for a transitional regime. Such a transitional regime, including a clear timetable, should be agreed as part of the Act of Accession. *The Advisory Council believes that the use of a transitional regime will also encourage the prospective Member State in question to achieve the necessary convergence. If a transitional regime is agreed, it should incorporate a timetable stating when any restrictions on capital movements are to be lifted. The bans on monetary financing and on privileged access to financial institutions should be strictly applied in all situations, given that a healthy state of government finances coupled with the absence of excessive deficits are key elements in the convergence process that is needed to prepare the way for accession to EMU.* Candidate countries should also draw up convergence programmes, which will be assessed by the Council and the Commission to see whether they provide sufficient guarantees that the necessary, sustainable convergence of government finance will be achieved.

Countries which have decided not to adopt the euro as their common currency and which are not taking part in the third stage of EMU - and these will include a number of the present Member States in addition to countries in Central and Eastern Europe - will enjoy a

2 This is a prohibition on the raising of credit directly from a central bank, and also a ban preventing the central bank from subscribing to issues of public debt instruments (there is a code of conduct regulating the way in which a central bank may act on the secondary market for public debt instruments, the aim being to prevent central banks from circumventing the ban on buying public debt instruments in the primary market).

3 The term 'privileged access' means that governments oblige financial institutions to lend them money to meet their financing requirements.

greater degree of political freedom. After all, these countries are not subject to some or all of the strict rules applying to membership of EMU. In addition, they have retained their own national currencies, which means that they are more or less free to pursue exchange-rate policies of their own. *The fact that countries which are not adopting the euro will have a greater degree of political freedom may have an adverse impact on the economic and monetary situation in the Union. The Advisory Council takes the view that, when the third stage of EMU commences, the Union will have to decide how best to deal with this situation, so that Member States which have discarded their own currencies in favour of the euro are not at a disadvantage compared with those which are not prepared to take such a step.* Whilst sanctions are unlikely to be very effective in this connection, market forces are likely to have some effect. In addition, the Advisory Council recommends agreeing on certain self-disciplinary action during the negotiations on the accession of new Member States. For example, all countries not adopting the euro will in any event be required to observe the provisions of Article 109 M of the Treaty of Maastricht, i.e. to regard their exchange-rate policies as 'a matter of common interest'.

II.2 Institutional capacity

Economic development depends on the presence of sufficient institutional capacity. This institutional capacity is also a condition which needs to be fulfilled if the Central and East European countries are to be able to enforce the *acquis communautaire* in full. The problem is, however, that the *acquis communautaire* is a necessary, but not a sufficient condition. After all, the *acquis communautaire* comprises only those issues which are needed to bring about European integration. Certain aspects, such as the registration of property ownership rights and the existence of a satisfactory judicial system, were already regulated in all Member States, so that there was no need to incorporate these in the body of EU law. In the countries of Central and Eastern Europe, on the other hand, there are no guarantees that all these matters have already been properly regulated. *This means that these countries will need to do more than simply accept and enforce the existing acquis communautaire. For this reason, the Accession Partnerships adopted by the Council on 30 March 1998 were right to identify the need for strengthening the institutional and administrative capacities of the states in question as being one of the short-term and medium-term priorities. This includes such things as improving the various regulatory procedures and bodies, strengthening the judicial system and the organisations responsible for border controls, the police, the ministries and courts, enhancing the legislative process and training judges in community law.* As from 1998, some 30% of the entire PHARE budget for each new Member State will be allocated to institution-building. The progress made and results achieved in this area will play an important role in the negotiating process leading up to accession.

II.3 The *acquis communautaire*[4]

The Advisory Council adheres to the basic principle that new Member States must accept the acquis communautaire. In taking this view, the Advisory Council is in agreement with the Member States of the European Union, who announced in Copenhagen in 1993 that this principle would underlie the forthcoming talks on the future enlargement of the Union. Accepting the *acquis communautaire* means agreeing to the entire spectrum of

4 The term *acquis communautaire* (otherwise known as 'Community patrimony' or 'shared law') is used in this report primarily in an economic sense. The Advisory Council already discussed other aspects of the *acquis communautaire*, such as human rights, good governance and the protection of minorities, in its previous report, entitled *An Inclusive Europe* (see page 10).

rules and administrative practices which have been adopted throughout the European Union in a range of different areas, and which are embodied by the various European treaties. On all previous occasions on which the European Union was enlarged, the talks with the prospective Member States also proceeded on the understanding that the latter would be willing to accept the *acquis communautaire*[5]. In other words, the accession strategy adopted may be said to be of a conventional nature, and is intended to strike a balance between the rights and obligations, not only of the new Member States in question, but also as they affect the relations between new and existing Member States.

It is clear from practical experience that the adoption of the *acquis communautaire* should be seen as a dynamic process rather than as a static incident. In other words, because (in the past) many new Member States were not able to enforce the *acquis communautaire* in full at the time when they joined, there has often been a need to use transitional provisions or other policy instruments. In the light of the great discrepancy in many areas between the level of development achieved by the current Member States and that achieved by the prospective Member States, it seems reasonable to conclude that the states involved in the 'first wave' of enlargement, viz. Estonia, Hungary, Poland, Slovenia and the Czech Republic, will not be able to enforce the *acquis communautaire* in full at the time of their accession. This does not diminish the need for these countries to do their utmost to enforce the *acquis communautaire*. The adoption of the *acquis communautaire* is a long-lasting, continuous process. A decision will need to be taken on a case-by-case basis during the course of the negotiations, as to which parts of the *acquis communautaire* each new Member State should enforce as soon as it accedes and which parts should be subject to transitional arrangements or other instruments.

The question of the adoption of the acquis communautaire should not lead to the misunderstanding that this is a matter which is of concern only to the prospective Member States from Central and Eastern Europe themselves. The Advisory Council believes that it is a shared responsibility, affecting both those countries which wish to join the European Union and its current members. In no circumstances should a desire to see the adoption of the acquis communautaire in full lead to the postponement of the accession of Estonia, Hungary, Poland, Slovenia and the Czech Republic. Such a negotiating strategy would be inconsistent with the prospect which has been held out to these countries of EU membership within a period of five to seven years; nor would it do justice to the political significance of the next wave of enlargement. If the adoption of the *acquis communautaire* is treated by the present Member States and the prospective members as a joint project, this will encourage the latter to continue to do their utmost to achieve their political, social and economic transformation. We must remember that the prospect of joining the European Union within the foreseeable future acts as a vital buttress underpinning their transformation: many of the reforms which they have already implemented are intended to pave the way for their future adoption of the *acquis communautaire.*

The Advisory Council proposes that more funds should be allocated to the pre-accession strategy as a means of showing that the current Member States and the acceding countries of Central and Eastern Europe have a shared responsibility for the adoption of the acquis communautaire. Under the proposals put forward by the European Commission, ECU 7 billion of the ECU 45 billion earmarked for the acceding states is intended for the pre-accession stage, while ECU 38 billion is available for spending during the period (until

5 Previous enlargements of the European Union took place in 1973 (when the United Kingdom, Denmark and Ireland joined), in 1981 (when Greece acceded), in 1986 (when Spain and Portugal were the new Member States) and in 1996 (when Sweden, Austria and Finland were admitted).

2006) following their accession. In formulating this proposal, the European Commission assumed that Estonia, Hungary, Poland, Slovenia and the Czech Republic would join the European Union in 2002. It is not clear, however, whether it would be wise to distribute the funds in this way, particularly as it is looking increasingly likely that the countries in question will not be joining the European Union until a later date. Only a relatively small amount has been allocated to the pre-accession stage compared with the amount that is to be spent during the period after accession. Because it is so important that the new Member States from Central and Eastern Europe are prepared in good time for adopting the *acquis communautaire*, more funds should be earmarked for the pre-accession stage. The Structural Funds could form a prime source of such funding, since they were established precisely for developing the governmental and administrative capacity of the Central and East European countries and thus placing them in a better position for adopting the *acquis communautaire.*

Alongside the question of the distribution of funding over the pre-accession and post-accession periods, the Advisory Council wishes to draw the government's attention to the size of the Cohesion and Structural Funds for the present Member States. The Advisory Council urges the government most strongly not to adopt the proposals presented by the European Commission. There are two reasons for this: first of all, these funds should be made much more degressive to prevent Member States from assuming that they have a standing right to them. Secondly, the emphasis in the coming seven years (and in the period thereafter) needs to be placed on the integration of the Central and East European countries in the EU and EMU. There are tremendous democratic, social and economic interests at stake here.

In the light of the appeal we have just made for responsibility for the adoption of the *acquis communautaire* to be shared between the current Member States and the acceding countries, the following sections will attempt to provide answers to the following questions:

a. At what date should the *acquis communautaire* be adopted: as soon as the countries in question accede or at the end of a period of transition? If it is to be the latter, what sort of regime should apply during this period?

b. How can guarantees be built in to ensure that the formal adoption of the *acquis communautaire* leads to its practical enforcement in a manner that is comparable with the way in which it is enforced by the current Member States?

c. What procedure should be adopted with regard to the exemptions applying to the current Member States, and in particular to opt-outs and forms of differentiated integration (flexibility)?

a. Transitional periods

It is inevitable, given the relative underdevelopment of the candidate countries in Central and Eastern Europe in terms of economic growth and governmental refinement, that considerable use will need to be made of transitional provisions. In this respect, the forthcoming enlargement of the European Union will be comparable with the accession of Spain and Portugal, rather than with that of the Scandinavian countries and Austria. The candidate countries will probably themselves ask for a transitional period to be observed. It will then be up to the Union to decide, on a case-by-case basis, whether each request is justified and whether the disadvantages inherent to granting such exemptions (i.e. in the form of legal inequality between the Member States; the raising of temporary barriers on the single market; administrative complications and uncertainty as to whether the

country in question is actually capable of reaching the finishing post) do not outweigh the advantages of allowing a new Member State to join the Union instead of postponing its accession to a later date.

How long the transitional period should be is also a matter that will need to be decided on a case-by-case basis. *The Advisory Council is of the opinion that a balance will need to be sought between the desire to minimise the number of exemptions and derogations granted on the one hand, and the risk of overestimating the ability of the new Member States to implement the acquis communautaire on the other, i.e. the possibility of expecting too much from them.* There should be plenty of opportunities for speeding up the transitional process at any time if it proves that progress is faster than expected. The final stage should in any event consist of the full and unabridged application of Community law.

Transitional arrangements which hinder intra-Community traffic and hence disrupt the principle of a free market should be avoided as far as possible, particularly with regard to trade. However, it will not be possible to apply this principle to agriculture and the free movement of persons (see below), which means that temporary contraventions of the principle of a free internal market will have to be accepted.

It is worth pointing out that it is not only the candidate countries which may take the initiative in requesting transitional arrangements. The Union itself may have its own reasons for wanting such a regime to be put in place. This may be the case, for example, if:

- the excessively rapid imposition of the *acquis communautaire* on the new Member States would have an unacceptable impact on current policy (agricultural policy in particular);
- the adoption of the *acquis communautaire* at an unreasonable pace would undermine the comparative advantages enjoyed by the Central and East European countries (perhaps elements of social policy);
- there were a need for protecting a specific interest on a temporary basis (i.e. the movement of persons).

In many cases, these transitional arrangements will probably involve exempting the acceding states from Community-wide standards in relation to products, training, the supervision of services, etc. for a given period of time. Clearly, the talks on these transitional arrangements will need to address a number of specific issues. For example, a situation may not be allowed to arise in which products and services supplied by the new Member States at a relatively low cost (i.e. because the states in question are not required to comply with Community legislation) enjoy a competitive advantage over products and services originating from the current Member States. In addition, the new states should not be entitled, during the period in which the transitional arrangements are in force, to refuse to accept products, services, etc. from the current Member States which do comply with Community legislation. As a third point, all covert re-importation schemes should be prevented (i.e. where products are exported to former Eastern bloc countries and then re-imported in order to circumvent tougher EU legislation).

<u>b. Practical enforcement of the *acquis communautaire* after it has been formally adopted</u>
It is generally anticipated that the governmental and administrative application of the *acquis communautaire* will form the weak link in the chain of its adoption by the candidate countries. Formal adoption in the body of domestic legislation will not provide sufficient guarantees that a country's economic players and citizens will be placed on an equal footing with those in the present European Union. This is an area in which there

are still plenty of deficiencies, especially in those new Member States whose institutional structures are already widely recognised as being deficient. This is another reason why the new Member States joining the Union on this occasion will be required to meet a number of special conditions.

This problem will not only need to be discussed during the talks on accession, but will also need to form a topic of debate and a focus for assistance in the pre-accession strategy. Presuming that the actual date of accession will not be before the middle of the next decade, there is still enough time to remedy any weaknesses in this particular area. *As we have already said, the Advisory Council believes that the overriding principle should be the adoption of the acquis communautaire by the new Member States.* The problem is, though: what happens if it becomes evident at a certain juncture that a candidate is not going to succeed and that substantial parts of the *acquis communautaire* will remain unenforced even after the transitional period? If this happens, the Union will find itself facing the difficult question of whether or not to defer the accession of the country in question for this reason. *The Advisory Council believes that deferring the accession of Central and East European countries (and possibly rejecting their membership applications entirely) on the grounds that the countries in question are not able to enforce the acquis communautaire in full would not be in the interests of the Union in its intended future constellation. At the end of the day, therefore, the Union will need to accept that countries can become full members without having adopted the acquis communautaire in its entirety. The Advisory Council believes it would be worth trying to establish whether there are any opportunities for reducing the scale of the acquis communautaire in accordance with the principle of subsidiarity (in other words, for both new and existing Member States), as this might help to solve the problem outlined above.*

c. Opt-outs and forms of differentiated integration

The existing opt-out clauses in the Treaties of Maastricht and Amsterdam were designed for a number of specific situations. The Advisory Council has discussed the question of the future policy on opt-outs. There are a variety of good reasons for adopting a more flexible approach, e.g. in order to deal with a situation in which a country has committed itself firmly to membership of the Union, but is unable (either more or less permanently or at least for a very long time) to accept certain parts of the acquis communautaire. If the acceding countries were given a choice, thus enabling them to exert more influence over their own destinies, this would help to strengthen political support for enlargement. Obviously, any opt-out should not include those features of the acquis communautaire which are essential to the effective operation of the single market, such as competition policy and trade policy. All things considered, the Advisory Council has decided not to make a general recommendation on the inclusion of opt-out clauses, believing instead that any requests for opt-outs should be assessed on their individual merits. It is clear that, from a broad Community perspective, the question of opt-outs should be approached with caution. However, the Advisory Council admits there is a distinct possibility that certain candidate countries will wish to be treated in the same way as the existing Member States and will try and negotiate opt-outs from certain aspects of the acquis communautaire during the talks on accession.

It is conceivable that the Union will itself decide that an opt-out clause is needed in a particular area and will more or less impose this on the acceding countries. Although this is by no means an elegant way of dealing with the matter, it could provide a solution for the problem of how to enforce the rules and regulations under the Schengen Agreement and Convention.

As regards the flexibility clause included in the Treaty of Amsterdam, it should be pointed out that this was designed solely for use in a positive sense, i.e. to allow certain Member States to move forward more rapidly than others, and not as an option for those wishing to lag behind. As things stand at the moment, the clause does not really apply directly to the Central and East European countries. At the same time, it is possible that this clause could be used as a mechanism for enabling the current Member States to make further progress in harmonising legislation and unifying markets during the transitional period, at a time when they do not wish to make the adjustment process for the new Member States even more difficult than it already is. In such a situation, the current Member States could be permitted to proceed more rapidly, in accordance with the guarantees included in the Treaty.

II.4 The adoption of the *acquis communautaire*

We have already described the principles which we believe should apply in general terms to the adoption of Community legislation and administrative practices. Obviously, the details need to be looked at for each individual policy field, so that account can be taken of the specific characteristics of the field in question. We will not have a clearer picture of the developments in each field until the negotiations are under way, the candidate countries have made their wishes known and the Union has adopted its own standpoints. In the meantime, the following points apply.

II.4.1 Customs union: industrial products and services

As regards the free movement of goods, the expiry of the transitional periods in the Europe Agreements should mean that all quantitative restrictions and levies should have been lifted by the time the new Member States join the Union (with the exception of various interim arrangements applying to trade between the EU and the countries in question). As regards services, the Europe Agreements impose an obligation on the Member States to take action to promote the gradual liberalisation of the provision of services.

The situation with regard to measures whose effects are equivalent to those of quantitative restrictions on the free movement of goods under the EC Treaty is such that Member States are obliged to adhere to the principle of mutual recognition of each other's standards. In other words, products which comply with the legislation in the Member State of origin must, in principle, be accepted by other Member States, unless the recipient Member State can claim that it is justified, by binding motives of public interest, in taking action to restrict trade in such products. The Europe Agreements contain provisions which are comparable with those of the EC Treaty on the mutual recognition of standards. Judging by past rulings by the Court of Justice on the application of such clauses in association agreements, whether these clauses have the same effect as the provisions of the Treaty depends on the purpose and contents of the association agreement in question.

However, as from the date on which the candidate countries join the Union, the Treaty provisions on the free movement of goods and services and all harmonisation directives and other rules in this area will apply in full to the new Member States. Against this background, the aim of the pre-accession strategy must be to maximise the candidate countries' capability of complying with both the substantive standards and the procedural rules incorporated in the current European legislation on industrial products and services. It is in this light that the need for establishing certification and standardisation authorities and the amendment of legislation on industrial products have been identified as short-term and medium-term priorities in the pre-accession strategy. One of the key issues in the accession talks will be the question of whether procedural rules are

effective enough to ensure that products and services from the candidate countries comply with the relevant European standards not only in a strictly formal sense, but also in actual practice. If they do not, it may mean that a transitional period will have to be agreed in order to protect public health or guarantee consumer safety or the stability of financial markets. A more general aim should be to ensure that the industrial and commercial sectors in the candidate countries are capable, at the date of accession, of supplying products and services which can compete on an equal footing with the products and services currently produced in the European Union.

Customs tariff
On the date of their accession, the candidate countries should observe the 'common customs tariff' and also lift all restrictions on trade with other new Member States. Special arrangements will need to be made where new Member States are required to establish trade barriers in relation to neighbouring countries which are not yet members of the Union but with which talks are in progress, and where such trade barriers would subsequently need to be lifted upon the accession of the latter countries.

II.4.2 Single market: agricultural products

The Dutch government broadly supports the European Commission's aim of further reforming the Common Agricultural Policy (CAP). Under the CAP reforms which have been introduced since 1993, price support is to be replaced by income support. *The Advisory Council believes that the reforms should be both intensified (within those sectors to which they already apply) and broadened (to encompass other sectors), for the following reasons:*

- *so as to prevent the imminent formation of surpluses, especially of cereals and beef;*
- *so as to anticipate the measures to liberalise trade which are likely to ensue from the forthcoming WTO (World Trade Organisation) talks;*
- *so as to facilitate the integration of new Member States;*
- *so as to retain access to global markets.*

The European Commission takes the view that additional action needs to be taken to supplement the current policy, notably by prioritising rural development. *The Advisory Council believes, however, that, if the subsidiarity principle is correctly applied, the promotion of rural development should be regarded as being the responsibility of the Member States themselves and not of the European Union.*

As far as the regulations on the CAP are concerned, the Advisory Council believes that it might be worth investigating the opportunities for simplifying Community-wide agricultural legislation. It is possible, for example, that Member States might be able to respond better to regional needs by making appropriate use of domestic legislation (subject to certain limits applying to the Community as a whole).

The agricultural sector forms a vital part of the economies of the Central and East European countries. Within the European Union, agriculture is one of the sectors for which policy is formulated primarily at a Community level. The wide disparities in agricultural practices and prices between the European Union and the countries of Central and Eastern Europe will necessitate the observance of lengthy transitional periods. In the interests of both parties, a lengthy transitional period will have to be agreed for the adoption of the various elements of the CAP, particularly in those sectors which are subject to government-controlled prices. This means that temporary import restrictions will be needed (in the form of levies and not quantitative restrictions), which will have to be gradually lifted

as the countries in question adjust their policies and prices to those of the European Union. It also means that border controls will have to be retained for the time being and that payments under price guarantees will be lower during the transitional period. This restriction does not apply, however, to spending on structural improvements.

As regards the impact of the agricultural budget on policy in the candidate countries, the Advisory Council is of the opinion that the Commission has earmarked only a very small amount for the structural improvement of agriculture in these countries (i.e. ECU 2.1 billion in 2006, in addition to ECU 1.2 billion for sales measures, out of an aggregate CAP budget of ECU 45.8 billion). The Advisory Council recommends targeting support for agriculture in the candidate countries more at strengthening the structure of the agricultural sector (i.e. by improving the rural infrastructure, the processing of agricultural products, and veterinary and physosanitary checks) and the administrative capacity that is needed for applying the CAP instruments. Increasing the share of the budget spent on improving the structure of the agricultural sector in the candidate countries may help to compensate for the absence of income support and for the fact that these countries benefit less from the CAP sales measures.

Once the new Member States have joined the Union, the next problem is the impossibility of achieving any short-term convergence between the situation in the current Member States and that in the candidate countries. Nor is any form of synthesis a realistic option. The agricultural sector in the Central and East European countries is characterised at the moment by a combination of low productivity and relatively low prices. Raising the prices in the East to EU levels within a short space of time would not be acceptable because of the effect it would have on the level of prosperity in the East. Given that between 40% and 60% of household incomes are spent on food (compared with 19% in the European Union), such a step could lead to a collapse in demand and social unrest in the countries in question. For this reason, there will have to be a long transitional period during which the agricultural sector in the candidate countries is brought into line with EU policy. Price cuts among the current Member States are likely to be a realistic option only if the Commission's proposals under Agenda 2000 are put into effect, or else as a result of the next WTO round. For this reason, the plans recently presented by the Commission in the wake of Agenda 2000 propose continuing with the present policy, aimed as it is at reducing prices to a level that is a better reflection of supply and demand on the open market[6]. If further price cuts in the EU are accompanied by income support (and this looks like being the situation in the future), this would mean that income support would be provided to the current Member States, but not for the time being to new Member States. It is worth mentioning that prices in the latter countries are bound eventually to rise during the necessary transitional periods, as agricultural markets tend to gradually to converge.

The Advisory Council sees only one solution for the long term, especially for the period after the expiry of the transitional period. This would be to reduce the level of income support to an EU-wide basic level, which individual Member States could then top up to a given maximum, provided that they met a number of predefined conditions. Such national top-up schemes would have to take account both of the relative prosperity of the Member State in question and of the cost of living in that state.

6 The Commission proposes lowering the intervention prices for beef, cereals and dairy products by 30, 20 and 15 percent respectively.

II.4.3 Competition policy

Restrictive practices
Strictly speaking, the current Member States of the European Union are not under any obligation to pursue a national competition policy that is consistent with the Union's policy or to adjust their own legislation on competition to bring it into line with Community legislation. The competition rules laid down in the EC Treaty themselves apply directly to practices pursued by firms which have an impact within the Union, insofar as these may affect trade between the Member States. Nevertheless, the vast majority of Member States (including the Netherlands since a short time ago) have in recent years either adopted new national legislation on competition that is in line with the European rules on competition, or adjusted their own rules accordingly.

The Europe Agreements contain provisions that are comparable with the competition rules laid down in the EC Treaty. These forbid restrictive agreements and practices insofar as they may have an adverse effect on trade between the country in question and the Union. The Central and East European countries have, during the past few years and in many cases with the backing of EU aid, either adopted new competition rules based on EU policy or amended existing competition rules to bring them into line with EU policy.

It is vitally important that, once enlargement has taken place, firms can compete in one single market where there is effective competition, so that the new Member States can also enjoy the full benefits of a free market economy. This is guaranteed only if there are adequately equipped and competent competition authorities to which both firms and consumers who believe that they are victims of restrictive practices can take their cases. For this reason, the pre-accession strategy must make provision for assistance to be provided to the candidate countries to help them continue to enact national anti-trust legislation in line with the European rules in this area. Among the problems involved here, as is made clear by the opinion or *avis* published by the Commission in July 1997, are the inadequate disciplinary powers granted to the authorities responsible for enforcing the policy in practice, and the inadequacy of their staffing, in terms of both numbers and qualifications.

In addition to national competition rules, the European competition rules will also apply directly to new Member States once they have joined the Union. The Advisory Council is not in favour of any exceptions being made to this principle. Because the competition rules take immediate effect, the European Commission is entitled to take action itself in the event of the rules being contravened. However, firms can also invoke European law in their own national courts. In order to ensure that the relevant provisions are properly enforced, judges in the countries in question will need to be trained in the application of European competition rules.

Environmental directives
In principle, transitional arrangements relating to environmental legislation should be limited to those rules and schemes whose effect is basically local. Where possible, key cross-border environmental problems should be made subject to Community law as from the date on which the new Member States accede. *The Advisory Council believes that a flexible approach should be taken in this respect.* Strict enforcement of Community law would place the new Member States at a grave disadvantage. Nor is the Union actually obliged to do so under the international agreements made in the framework of the WTO and Kyoto.

Business law
In order to ensure that the single market operates effectively, the company law directives should be transformed into corresponding national legislation and their enforcement guaranteed, as soon as the new Member States accede. The relevant judicial infrastructure should also be in place, such as adequate procedures for dealing with matters of business law, effective rules on bankruptcy, a reliable system of registering property ownership rights, etc.

Undertakings with special rights
The application of Article 90 of the EC Treaty to undertakings with government monopolies or other special or exclusive rights forms a particular problem in this respect. The economies of Central and Eastern Europe have only recently ceased to be state-controlled, and the former system has left a powerful legacy behind. The problem is not so much the existence of monopolies (after all, there are also monopolies in the current Member States, albeit subject to European legislation) as the strong links which continue to exist between the state on the one hand and trade and industry on the other. This problem can be solved in part by ensuring that the existing European rules on the transparency of relations between Member States and state-owned enterprises are enforced effectively and with immediate effect. At the same time, the talks on the accession of the new Member States must provide scope for action to be taken to remedy the adverse effects of these links on effective competition. The first step will be to analyse the current situation, and the second to make the necessary changes.

State support
As far as state aid is concerned, the Europe Agreements oblige each signatory state to abolish all forms of aid which distort competition and affect trade between the state in question and the European Union. In addition, each state is obliged to establish a system for monitoring the way in which government aid is granted. Not much progress has been achieved to date in this respect. This is another area in which proper procedures are required in order to guarantee that the provisions of the EC Treaty on state support (which also apply directly to new Member States as soon as they have acceded) are effectively enforced. Such procedures need to be designed in such a way as to ensure that any schemes which are of the nature of state support are identified and reported to the European Commission.

II.4.4 Social legislation

Social policy is an excellent example of an EU policy area in which widespread use is made of the principle of subsidiarity. One of the reasons for this is that the achievement of a certain degree of harmonisation depends not so much on European legislation as on the way in which the adoption of a particular scheme by one Member States may encourage other Member States to follow suit. Whilst Agenda 2000 does not devote much space to social policy or to the social aspects of enlargement, the Commission does point out that the standards for social policy are low in most of the candidate countries, particularly in relation to public health, unemployment and working conditions. The situation is by no means alarming, however: there is no reason at present to assume that the East European countries will not be capable of complying with European law by the time they join the Union. The document explaining the reasons for selecting the first wave of candidates with which negotiations are to be opened cites Slovenia as the only country which needs to make progress in the fields of social affairs and employment. The implication is that there are unlikely to be any problems to speak of in other countries. Any problems which do arise will have to be resolved by providing pre-accession aid.

Hardly any attention has been devoted to an analysis of the social aspects of enlargement, and this is puzzling for a number of reasons. The first is the announcement made by the European Council that employment is to be a top-priority issue within the European Union. The accession of East European countries is bound to affect employment both in the current Member States and in the acceding countries themselves. It would have made sense to analyse the anticipated, possible or probable effects, particularly as the enlargement of the Union is frequently associated with the relocation of production capacity, plant closures and a flood of cheap East European products on West European markets. Whatever opposition there will be to enlargement is likely to concentrate on its potential impact on employment. This means that the Union will have to decide whether it would be practical and desirable to adopt a policy designed to offset the potential adverse effects which enlargement would have on employment. A proper decision cannot be taken without an in-depth study of the impact of enlargement on jobs and an analysis of the likely situation in each industrial sector. It should also be mentioned, by the way, that enlargement will also have a significant positive impact on employment thanks to the expansion of the internal market.

A second reason for paying more attention to the social aspects of enlargement relates to the political debate now taking place on the free movement of workers and its impact on the labour markets in the current Member States. In Germany in particular, a growing body of public opinion is in favour of instituting a transitional period for the free movement of workers from the new Member States, in order to protect the current Member States from a flood of East European labour. *The Netherlands would not appear to require any 'protection' of this sort, as Dutch workers are unlikely to be displaced by cheap East European workers. This is because the fundamental principle underlying the free movement of workers is that employers in one Member State may not discriminate against employees from another Member State, who are therefore entitled to the same pay as employees from the 'home' Member State.* (N.B. It was for this reason that the deluge of Spanish and Portuguese workers, who were expected to flood the Dutch labour market when these countries joined the Union, never actually materialised.) It was recently decided that the principle of equal treatment should also apply to short-term secondments of staff to another Member State. In other words, any East Europeans working in the Netherlands are entitled to the same pay and conditions as Dutch employees. The situation in Germany may well be different in that there is no statutory minimum wage in Germany (with the exception of a limited minimum wage for the construction industry) and collective agreements there are not usually subject to a statute compelling their general acceptance. *In spite of the understandable objections raised by Germany, the best option would seem to be to encourage all Member States to enact clear legislation on minimum wages, with the Member States themselves bearing the primary responsibility for preventing the disruption of their own labour markets.*

There is a third reason why social issues need to be given greater emphasis, and this relates to the question of finality. It is precisely the high European standard of living and the European social model which are regarded as the characteristic features of the Union, which set it apart from Japan and the US. The European model consists of national systems supplemented by a framework of European legislation regulating the free movement of workers, by standards on the equal treatment of men and women, by policies on the protection of health and safety at work, and by various provisions on matters such as employees' rights to information and consultation. The enlargement of the Union will inevitably have an impact on the development of the European social model. On the one hand, it will be more difficult to reach political agreement within the Union given the wide gap that exists between East and West in terms of the standard of living. Any attempt to harmonise employment conditions or social security at a stroke would lead to

high levels of unemployment in the Member States. On the other hand, the widening prosperity gap will also create a growing need for clear standards. Enlargement will intensify competition. Given that educational standards in Central and Eastern Europe are more or less the same as in Western Europe, competition in the years ahead will focus on wage costs (comprising pay and conditions, social security contributions and tax). This will squeeze social standards in all Member States and hence create a need for pan-European standards. One may thus conclude that, whilst enlargement will boost the demand for European social standards, it will become more difficult to retain the European social model as a single concept. There are various courses open to the EU for retaining its social model:

1. Continuing on the same track. Apart from a limited number of aspects, social policy, protection from unfair competition and employment policy would all remain the responsibility of each individual Member State. At the same time, competition on the basis of social policy would tend to harmonise the national systems.
2. Supplementing the national systems by a European employment policy to offset the adverse effects of enlargement. This would include targeting aid at certain regions and countries in order to enable them to adopt EU policy and/or to cope with the effects of policy changes. Obviously, just how effective such support would be is a matter of debate.
3. A differentiated social model. The EU would set standards, but these would be relative. Basic benefits, for example, could be expressed as a percentage of the recipient's previous pay or as a percentage of average income, or could be linked to the average standard of living or to the subsistence level.
4. A combination of 1, 2 and 3, producing a flexible social model. The EU would offer opportunities for mutual coordination by setting certain standards, but it would be up to each Member State to decide whether or not to observe them. This would have the advantage of enabling high (albeit differentiated) standards to be set which would have a social and political impact in all Member States.

Whichever option is chosen, there are no guarantees that the European social model will remain in place and it is for this reason that social issues need to figure prominently on the political agenda. This should also affect the strategy adopted for the negotiations on accession. It is vital that maximum public support should be engendered within the candidate countries for their membership of the EU, and this means that they should offer plenty of scope for debating the social problems and the social impact of membership. To this end, trade unions, employers' organisations or other NGOs in the candidate countries should play a role in the negotiating process.

II.4.5 Free movement of persons

Prohibition of discrimination on the grounds of nationality and the free movement of workers

The question of the free movement of workers may cause problems both for the current Member States of the EU and for the candidate countries. Public interest, however, appears to be focused primarily on an East-West migration flow, and the spectre of unemployed West Europeans having to compete for jobs with large numbers of East Europeans would seem to loom large in the minds of the public. We have already pointed out, in Section II.4.4, that we do not believe there are any grounds for concern about the prospect of such migratory flows. The principle of non-discrimination is based on legal migration, however, and does not take account of the possibility of illegal migration. The presence of illicit forms of discrimination makes it easy for incentives to arise which can cause illegal migration. After all, for many workers in the candidate countries, a wage

level that is a mere fraction of the normal level of pay in the current Member States is still considerably higher than average pay levels in their own countries. It should be borne in mind, though, that such a situation has nothing to do with enlargement in itself. Even now, the conditions are already in place that can spark off illegal migration, and whether or not the Union is expanded to include a number of new members does not materially alter this situation. We may therefore conclude that, in itself, the enlargement of the Union will have little effect on migratory flows, both legal and illegal.

The situation is different with regard to the movement of persons in accordance with the Schengen Agreement and Convention. The Schengen regime can be applied to the countries of Central and Eastern Europe only once a secure system of border controls has been established for their external borders. Until this time, border controls at the internal borders should be retained. We would, however, recommend stipulating a deadline by which external border controls should be in place, so that the new Member States are not able to opt out on a permanent basis.

II.5 Adoption of the *acquis communautaire* and institutional provisions

As things stand at the moment, there is no reason to assume that the use of transitional periods will have any institutional consequences (given the experience with previous accessions and given the transitional arrangements which used to be in force between the Member States themselves). It is also difficult to imagine a situation in which a new Member State would be prepared to accept treaty provisions which would have the effect of restricting its right of co-decision.

An interesting matter in this connection is the decision-making process with regard to future enlargements of the European Union (particularly in the light of Greece's attitude to cooperation between the Union and Turkey). Because the admittance of new members is a constitutional decision that must be taken by a unanimous vote and then ratified by Parliament, there is no question of the legal rights of one or more new Member States being formally restricted. In cases where this is necessary, agreements will need to be reached at a political level in order to prevent the risk of Member States blocking future decisions by using their right of veto. Such agreements could take the form, for example, of declarations of intent issued at the date of accession.

III The Cohesion and Structural Funds

One of the objectives of the Union is to pursue a structural policy in order to foster economic and social cohesion between the Member States and hence reduce the socio-economic disparities between the Member States by raising the GNP of the poor Member States (this principle is enshrined in Article 130 A of the Treaty of Amsterdam). The Union seeks to achieve this goal by transferring funds to the poorer Member States in general, and to disadvantaged regions in particular. The Union established 'Structural Funds' for this purpose in 1975; these were complemented by the formation of a 'Cohesion Fund' under the Treaty of Maastricht. This flow of financial resources will play a key role in the enlargement of the Union and will have a particular impact on the ability of the new Member States to adopt the *acquis communautaire.*

III.1 The Funds and enlargement

The enlargement of the European Union as a result of the accession of countries from Central and Eastern Europe has the effect of complicating the issue of transfer payments under the terms of the Structural Funds and the Cohesion Fund. With a GNP of around 32 percent of the average for the Union as a whole, all these countries qualify for aid from the Structural Funds.

III.2 The Commission's proposals

As part of the plans announced in *Agenda 2000*, the Commission proposed extrapolating from the current financial arrangements (which are due to expire in 1999) so as to cover the period from 2000 to 2006. This would mean that the aggregate funding available would continue to be subject to a ceiling of 1.27 percent of the Union's GNP. The Commission proposed subjecting the Structural Funds to a maximum limit of 0.46 percent of GNP for the period from 2000 to 2006. The implication of this proposal is that ECU 275 billion would be made available for the period in question. The Commission proposed spending this money as follows:

- ECU 230 billion would be spent on the current Member States (with ECU 20 billion of this being channelled through the Cohesion Fund);
- ECU 45 billion would be spent on the new Member States (with ECU 7 billion of this being spent in the form of pre-accession aid).

The Commission suggested that, given the limited absorption capacity of the countries of Central and Eastern Europe, the value of the transfers to these countries should not exceed 4 percent of their GNP. The Commission also recommended replacing the present seven objectives by the following three:

1. aid to the disadvantaged regions (at present objective 1);
2. aid for economic and social restructuring (at present objectives 2 and 5a);
3. aid for the development of human resources, targeted at modernising the educational system, training and employment.

III.3 Assessment of the Commission's proposals

One of the more striking aspects of the Commission's proposals is the fact that, even after the accession of the Central and East European countries, the current Member States will continue to be the Funds' prime beneficiaries. Whilst 84 percent of the funds'

resources would be earmarked for the current Member States, the Central and East European states would have to make do with the remaining 16 percent. *In the Advisory Council's opinion, this does not do justice to the gap in economic development that exists between the countries of Central and Eastern Europe and the current Member States. The Advisory Council therefore advises the government not to support the adoption of the proposals made by the European Commission in this respect, and instead to press for a higher rate of degression in relation to the current Member States which are the beneficiaries of the Funds at present, so that a corresponding amount can be made available for those regions of the new Member States which qualify for support. This would allow the Funds to be used in a credible manner to support the efforts made by the new Member States to adopt and apply the acquis communautaire in practice.* The average GNP per capita in the countries of Central and Eastern Europe is 32 percent of the average for the Union as a whole, whereas the corresponding figure for Greece is 64 percent, for Portugal 68 percent and for Spain 76 percent; even Ireland now stands at almost 90 percent. These figures tend to suggest that the way in which the funds are distributed is not apparently based on differences in economic development. Rather, the proposals would appear to stem (unjustly) from a desire not to endanger the readiness of the current Member States to accept the enlargement of the Union by switching a substantial amount of funds to the Central and East European countries. The Commission claims, however, that the aid should be subject to a ceiling of 4 percent per annum because of the limited ability of the Central and East European countries to absorb such additional funding. *The Advisory Council is of the opinion that this ceiling is too static and is based too much on budgetary and distributional considerations. It would be better if a more dynamic approach were to be adopted, the objective of which would be to increase the countries' absorption capacity by strengthening their institutional capacity. If more funds were spent on strengthening their institutional capacity, it could be agreed, for example, that the aid intended for the countries of Central and Eastern Europe could be increased by 10 percent per annum during the period from 2000 to 2006.* This would serve a dual purpose: first of all, it would increase these countries' absorption capacity and hence step up the pace at which the development gap would be narrowed. Secondly, strengthening institutional capacity could help to speed up the rate at which the *acquis communautaire* is adopted (the necessity of which has already been discussed in Chapter II).

The Cohesion Fund is a separate case. This fund is intended to be used for helping the poorer Member States to achieve the degree of convergence which they need in order to take part in the third stage of EMU and to adopt the Union's common currency. New Member States will also eventually need to achieve the same level of convergence. *In other words, there are good reasons for allowing the countries of Central and Eastern Europe to benefit more (albeit degressively) from the Cohesion Fund than the current Member States.*

The Advisory Council wishes to emphasise that any decision to channel financial resources to the countries of Central and Eastern Europe should not be at the expense of aid to developing countries, for which an obligation exists under Article 130 U of the Treaty.

In conclusion, the Advisory Council feels it is vitally important that Agenda 2000 should lead to a different strategy than that envisaged by the Commission. Specifically, the Union should decide to gradually reduce the flow of funding and, in implementing the results of the fundamental spending review, should allocate considerably more funding to relevant regions in the candidate countries. This would help to create a realistic prospect of both accession and adoption of the acquis communautaire. The Advisory Council's

reasons for urging such a course of action are based not only on political idealism, but also on a conviction that it will lead to a new economic dynamism and growth in the European Union.

III.4 The Dutch contribution to EU funds

The size of the Dutch net contribution to EU funds is on the rise and (although it is not in itself linked to the question of enlargement) will only grow even further under the European Commission's plans. The debate on this issue shows that this is not a problem which should be underestimated. At the same time, it is important to remember that the Netherlands was a net beneficiary for many years despite enjoying an average level of prosperity and despite receiving a fairly large share of customs duties, for example. The issue is too fundamental and too wide-ranging to be capable of exhaustive analysis in a report such as this. On the other hand, it plays such an important role in the government's assessment of the situation that the Advisory Council believes it would be wrong not to devote any attention to it at all. The problem has become particularly pressing given that the 1998 coalition agreement is based on an assumption that the Netherlands will be receiving a larger amount from EU funds while its contribution will be reduced by an amount increasing to ECU 1.3 billion in 2002. However, such a situation can arise only as a result of negotiations on a range of issues, some of which are subject to the unanimity requirement. It is at the very least presumptuous to take it for granted that such negotiations will definitely generate the desired quantitative result.

The Advisory Council has no reason to believe that figures on the basis of which the European Commission has calculated the cost of enlargement and the way in which it is to be funded within the existing limits (i.e. 1.27% of GNP) are erroneous, provided that the underlying assumptions are correct. The Advisory Council therefore concludes that, in broad terms, enlargement will not cause any external financial problems, as the current general framework would appear to offer sufficient scope to cope with the financial impact of enlargement.

The same cannot be said, however, of the positions of individual Member States (or groups of Member States, as the case may be). We are on the threshold of a fierce debate between net contributors and net beneficiaries, a battle which looks set to involve a number of complex issues which will not prove easy to resolve. *The Advisory Council takes the view that the problems surrounding changes in the net positions of the 15 current Member States should not be allowed to hamper the achievement of further steady progress in the negotiations, culminating in the accession of the new Member States.* This viewpoint is consistent with the standpoint which the Advisory Council adopted in its first interim report with regard to the resolution of the institutional problems and the adoption of the *acquis communautaire*. Nevertheless, it is important to be aware that there is a major political problem lying in wait, the features of which have already begun to emerge in the form of statements made by net beneficiaries (such as Spain) and net contributors (such as the Netherlands).

An analysis of the position of the European Commission brings the Advisory Council to the conclusion that the Commission apparently expects the net contributors to show more consideration for the 'other side' than the net beneficiaries are expected to show. If one takes an objective view, this would seem at first sight to be an odd state of affairs, unless the general economic situation of the net beneficiaries is indeed so much worse than that of the net contributors that the latter would not have any great difficulty in 'selling' the Commission's viewpoint to their electorates. The Dutch government has apparently concluded that this is not the case, and has decided to follow a course which the

European Commission regards as unacceptable, i.e. changing the relative scale of its contribution to the Union's budget, which would necessitate the amendment of the Own Resources Decision. The European Commission has decided against taking a more radical line on the question of the way in which the Union is funded. Whilst it is true that this is tantamount to opening 'Pandora's box', it would not be the first time that the box had been opened. The box was also prised open in 1988; admittedly, after a great deal of effort, but not without success. The Advisory Council does not therefore take the view that the European Commission has taken the right decision. There is a risk that the presence of a growing number of relatively poor members in the Union will only make the problems surrounding the funding of the Union more intractable in the future rather than bring a solution closer. It would be better if the Commission were prepared to lead the way in finding a lasting solution, as it did in 1988. There is very little chance of a satisfactory outcome if the Commission is not willing to take on this role.

IV Institutional aspects

The structure of the Union, which was initially designed to support six Member States, has not undergone any fundamental review at any stage of its history. On each occasion on which new Member States have joined the group, the current structure has simply been expanded by extrapolation. This has led to an ever larger Council, an ever larger Commission and an ever larger number of MEPs. By simply adding on more building blocks, the Member States have effectively postponed vital reforms. In its present state with its 15 Member States, the Union has now reached its limits. If today's structure were extrapolated to embrace a Union of 20 to 25 Member States, this would undermine the effectiveness of the Union and seriously hamper - and perhaps even halt altogether - the progress of ongoing integration. Enlarging the Union in the same way as in the past would exacerbate the already existing problems by creating an unmanageable Parliament and an unwieldy Commission, and by causing the decision-making process in the Council to stagnate.

It is clear from the widely differing opinions held by the Member States on the question of how the institutional reforms should be managed that it is not going to be easy to reach agreement on this issue. This is also borne out by the very modest progress made in this area during the talks on the Treaty of Amsterdam, which postponed institutional reforms to the next enlargement[7]. Belgium, France and Italy added a declaration to the Treaty stating their intention of devoting an IGC to the question of institutional reform prior to the enlargement of the Union. The Advisory Council believes that, if this were successful, it would probably represent the best approach to the problem. The Advisory Council has decided to include in this report a number of recommendations for reform of the Union's institutional structure. The principal areas concerned are the composition of the Commission, the weighting of votes in the Council, the powers of the European Parliament and the role of the Presidency.

IV.1 The Commission

To date, the composition of the Commission has been based on the principle of each Member State supplying one Commissioner, with the exception of the large Member States, which have supplied two. If this principle was applied to a Union consisting of 25

7 The following protocol was drawn up as a means of putting off a resolution of the problem until a future date: 'Protocol in the Treaty of Amsterdam on the institutions with the prospect of the enlargement of the European Union'.

Article 1:
At the date of entry into force of the first enlargement of the Union, notwithstanding Article 157(1) of the Treaty [...], the Commission shall comprise one national of each of the Member States, provided that, by that date, the weighting of the votes in the Council has been modified, whether by reweighting of the votes or by dual majority, in a manner acceptable to all Member States, taking into account all relevant elements, notably compensating those Member States which give up the possibility of nominating a second member of the Commission.

Article 2:
At least one year before the membership of the European Union exceeds twenty, a conference of representatives of the governments of the Member States shall be convened in order to carry out a comprehensive review of the provisions of the Treaties on the composition and functioning of the institutions.

Member States, the number of Commissioners could easily rise to over 30. This would make the Commission much less effective, as, with the number of Commissioners exceeding the various areas of responsibility, certain responsibilities would need to be divided over two or more Commissioners. *The Advisory Council believes that a limit should be imposed on the number of Commissioners in order to ensure that the Commission is still able to operate effectively, and that this limit should be within the range of 10 to 15. This necessarily means that it would no longer be possible for each nationality to be represented on the Commission. The Advisory Council is of the opinion that this should also apply to the large Member States, which should not be guaranteed a permanent seat on the Commission. The Advisory Council is not in favour of allowing large Member States a permanent seat on the Commission, as this would make it even more difficult for the small Member States to be represented on the Commission. The Advisory Council believes that the Commission itself will need to find a means of ensuring that the views of those Member States which are not represented on the Commission nevertheless play a role in the decision-making process.*

1999 is going to be a vital year for the Union, as it is the year in which a new Commission is due to be appointed, and a new Parliament will be elected. At the same time, the Union will be facing the dual challenge of its own enlargement and the introduction of the euro. Paradoxically, even though the developments in the Union are tending to have an ever greater impact on the daily lives of its citizens, the distance between the Union and its citizens is actually tending to widen rather than narrow. The result is the emergence of what is known as the 'democratic deficit'. The recent proposal made by 'Notre Europe' (an institute headed by Jacques Delors)[8] for the President of the Commission to be appointed on a more political basis would help the Union to achieve its goal of strengthening its democratic legitimacy and turning remoteness into familiarity.

We shall discuss the question of the rotating presidency of the Council further on in the report.

IV.2 The Council

The number of Commissioners cannot be limited without revising the weighting of votes in the Council. The Council is the institution in which all Member States are represented. A scale of weightings has been introduced to take account of the wide economic and geographic disparities between the Member States, as well as the differences in their population sizes[9]. The enlargement of the Union as a result of the accession of countries

8 Under this proposal, each of the European political parties (or groups of such parties) would designate one of the candidates on its list for the European elections as being its preferred candidate for the presidency of the European Commission. This would allow voters to express a preference for the presidency of the Commission. The assumption is that the European Council, when appointing the President of the Commission, would be unable to ignore the candidate who had amassed the greatest support in the EP elections, particularly since the President of the Commission also needs to have the confidence of the majority of members of the EP. This proposal could be implemented without any Treaty amendments, and would represent the first step on the road to an elected President of the European Commission.

9 The scale of weightings is as follows at present:

10 votes:	Germany, France, Italy and the UK;	4 votes:	Sweden and Austria;
8 votes:	Spain;	3 votes:	Denmark, Finland and Ireland;
5 votes:	Belgium, Greece, the Netherlands and Portugal;	2 votes:	Luxembourg.

from Central and Eastern Europe will lead to a further deterioration in the relative position of the large Member States, given that (with the exception of Poland) all the new Member States are relatively small. In other words, there will be an increase in the number of small Member States on the Council, and this will have the effect of reducing the influence of the large Member States. During the past few decades, the weighting system has helped to prevent any one Member State or group of Member States from exerting undue influence over Council decisions. To date, two large Member States and one small Member State have been able to block decisions by forming a 'blocking minority'[10]. If the Union consisted of 20 Member States and if the current scale of weightings were retained, the increase in the number of small Member States would result in three large Member States no longer being able to form a 'blocking minority'.

The Advisory Council is in favour of retaining the present system of weighting of votes in the Council, by which the Member States are divided into six clusters (as described in footnote 9). This would result in the continuation of the stable relations which the Member States have enjoyed during the past few decades. It is important that a situation does not arise in which a desire to take account of slight differences between Member States leads to a decision to abandon the system of six clusters, resulting in deep divisions between the Member States about the distribution of votes. In the interests of the Union's continued stability, countries such as France and Germany should be allotted the same number of votes, as indeed they have been until now. Similarly, Belgium and the Netherlands should be placed in the same cluster in order to prevent major disputes such as occurred during the talks on the Treaty of Amsterdam, when the Netherlands proposed allocating Belgium a lower number of votes. *The Advisory Council is of the opinion that the acceding countries should also be placed in these clusters, according to their population sizes.* This would mean allocating Poland (which is comparable with Spain) 8 votes, the Czech Republic and Hungary 5 votes each, and Estonia and Slovenia 3 votes each. If the same system of distribution of votes were applied to countries which are likely to accede at a later stage, it would mean that Latvia, Lithuania and Slovakia would be allotted 3 votes each and Bulgaria would be allotted 4[11].

In order to prevent the relatively small Member States from being over-represented in the decision-making process (given the increase in their number), the large Member States could be allotted a larger number of votes. This would enable the current system of a 'blocking minority' to be retained, and hence guarantee stable relations between the Member States. This would mean that there would be no need to introduce a system of double-majority voting based, for example, on population size.

IV.3 The European Parliament

The European Parliament has three different types of powers: it has certain legislative powers, budgetary powers, and the power of control over the Union's activities. Although the EP's powers in these fields were extended under the Treaty of Amsterdam, they have nonetheless remained limited to date. The main instrument by which the EP can have a

10 The total number of votes stands at 87 at present. 62 votes are needed to form a qualified majority. A 'blocking minority' is 26 votes. Under the Ioannina Agreement, if a minority of between 23 and 25 votes is not able to support a motion tabled by the Commission, the Council must do its utmost to reach a compromise within a reasonable period of time that can count on the backing of 65 votes.

11 Romania has 23 million inhabitants. Any decision on the cluster in which Romania will be placed needs to be deferred to date of Romania's accession.

say in the decision-making process is known as the 'codecision procedure', which gives the EP the right to amend European legislation. The EP's budgetary powers allow it to adopt or reject the annual budget. There are, however, certain restrictions on its powers depending on whether the expenditure in question is 'compulsory' or 'non-compulsory'. The term 'compulsory expenditure' covers all items of spending which ensue from European treaties (or as a result of decisions taken pursuant to such treaties), the bulk of which is spending on the CAP. If the expenditure in question is compulsory, the EP is only entitled to table amendments for consideration by the Council, but if the expenditure in question is non-compulsory, the EP is empowered to actually amend the spending proposal. The EP's power of control is exercised primarily through its right to remove the Commission from office.

The Advisory Council takes the view that the EP should enjoy the 'right of codecision' as a general principle, and that this should also apply, for example, to the framework regulations for the CAP. This principle should be abandoned only in exceptional circumstances. As regards the EP's budgetary powers, the Advisory Council believes that no distinction should be made any longer between 'compulsory' and 'non-compulsory' expenditure, and that the EP should also be entitled to amend proposals relating to spending on the CAP. In order to exercise its power of control effectively, the EP should be empowered not only to remove the Commission as a whole from office, but also to dismiss individual Commissioners. This would be a logical move once the Commission no longer consists of representatives from all the various Member States. The latter power would enable the EP to operate more as a parliament in the true sense of the word.

The Treaty of Amsterdam imposes a maximum limit on the number of MEPs, in order to prevent the Parliament from growing too big and thus becoming ineffective. The Treaty includes an additional article subjecting the number of MEPs to a ceiling of 700. If five new Member States joined the Union and no changes were made to the distribution of seats, the result would be a total of some 760 MEPs. In other words, the number of MEPs will need to be reduced by around 60 following the enlargement of the Union. The next question is: which Member States should have their allocation reduced, and by how many seats? The Advisory Council believes, however, that the most important problem is not the size of the EP, but the way in which its members are elected. No Community-wide electoral system has been introduced to date. The way in which MEPs are elected in each country depends on the type of electoral system used in that country. This leads to major disparities in the way in which MEPs are elected. In the Netherlands, for example, MEPs are elected by a system of proportional representation, whereas the UK uses a constituency voting system in which the candidate amassing the largest number of votes (but not necessarily a majority of the votes cast) is elected. The EP itself would like EP elections to be held in a more uniform manner, and in July 1998 adopted a bill which proposed using a system of proportional representation linked to a quota scheme as the basis on which the 2004 elections should be held. The EP has suggested going one step further at the 2009 elections by introducing a system of European voting lists for a certain percentage of MEPs. *The Advisory Council believes that the EP's proposals are praiseworthy and that the Dutch government should do its utmost to ensure that these proposals are adopted.*

The Parliament has been brought into disrepute on a number of occasions in the recent past. The controversy has been sparked off by the conduct of individual MEPs with regard to the payment of certain expenses. Until now, MEPs have been subject to the laws of the country which they represent. *The Advisory Council believes that, in order to improve the credibility of the EP, the legal status of MEPs should be harmonised and that the Parliament's attempts to prevent the system of allowances from being abused should be supported.*

IV.4 The Presidency

The Presidency of the Union is held in turn on a six-monthly basis by each Member State. The present situation, with a 15-member Union, is that each Member State holds the Presidency every seven and a half years. If the present formula is retained, future enlargements will mean that the gap between each Member State's tenure of the Presidency will get longer and longer. This is not conducive to the effective functioning of the Presidency. *The Advisory Council takes the view that a system of rotating the Presidency of the Union will no longer be effective once the Union consists of 20 to 25 Member States. The Advisory Council is therefore in favour of adopting a system by which a President is appointed for a longer period (i.e. at least two years) and is supported by the Council's General Secretariat.*

Meetings of the Council of Ministers are prepared by the Committee of Permanent Representatives of the Member States (Coreper). To date, this Committee has been chaired by one of its members, viz. the representative of the Member State currently holding the Presidency. If the system were changed so that the Presidency was held on a more permanent basis, Coreper should be chaired by the Secretary-General of the Council[12].

12 The Advisory Council feels that there would no longer be any need for the Presidency of the Council of Ministers to be held on a longer-term basis if the proposal made by 'Notre Europe' (discussed in Section IV.1) were to be adopted.

V Common Foreign and Security Policy

The history of European integration did not initially include any framework for foreign policy matters. The situation changed at the end of the 1960s, however, as the Member States began to consult each other on foreign policy. These consultations led ultimately to the introduction of European Political Cooperation (EPC) in 1970. The end of the East-West conflict had the effect of intensifying cooperation on foreign policy matters, and this was reflected in the terms of the Treaty of Maastricht. However, it became clear during the course of the talks on the Treaty of Maastricht that most Member States were not willing to allow their powers in relation to foreign policy to be subsumed into a community structure. This resulted in an intergovernmental framework for the Common Foreign and Security Policy (CFSP), known as the second pillar of the Union.

V.1 The CFSP in practice

The application of the CFSP in practice has revealed a number of major weaknesses. Because of the difficulty that has been experienced in reaching unanimous decisions, the Union has not been able to mount a common approach to serious problems and indeed has scarcely been able to take any action to speak of. It would, however, be wrong to attribute these weaknesses to the way in which decisions are reached. On the contrary, the fact that the Treaty of Maastricht requires decisions on the CFSP to be taken on the basis of unanimity and not by a qualified majority is merely a reflection of a reluctance to achieve further integration within the Union in this key policy area. One of the principal reasons for this is that many Member States regard foreign policy as the ultimate expression of an aspect of national sovereignty which they do not wish to surrender to the Union. For France and the UK, this sovereignty is also reflected by their permanent seats on the UN Security Council, which neither country is willing to give up in favour of a permanent EU representative. *The Advisory Council believes that France and the UK should make a greater effort to coordinate policy and should provide more information to other Member States and the Union on matters discussed in the Security Council.*

There is a second reason why the CFSP has not been effective to date, and this stems from the wide differences of opinion which exist among the Member States on the substance of foreign policy, resulting either from the disparate nature of their interests or from their disparate views on these interests. Consequently, Member States have sought to protect their interests by insisting on unanimity.

There is also a third reason, of a rather different nature, which has also contributed to the failure of the CFSP: it is simply the case that the need for a common policy in this particular area is not felt as strongly as it is in other policy areas. Over the past few decades, the need for economic integration (for example, the completion of the single market) has acted as a stimulus for further European cooperation among the Member States. One of the major driving forces in this respect was the desire not to fall further behind Japan and the United States in terms of global economic relations. However, the Member States do not feel that there is as much need for foreign policy to be further integrated as there was for economic integration. This is partly due to the dominant role which the United States often plays in settling both actual and potential international conflicts.

For all these reasons, the Union has generally been very much a minor player in the field of foreign policy to date (it has not had any impact, for example, on the crisis in the Balkans or on the Middle East peace process). *Although the Union's inability to perform*

an effective role has not had any disastrous effects on its own functioning, the Advisory Council feels it is regrettable, in the light of the Union's wish to become a key player on the global political stage, that it has not been able to formulate a credible CFSP. This is all the more a pity given the close links that exist between the CFSP and policy areas such as trade, economic and monetary policy, agriculture and development cooperation.

The enlargement of the Union is one of the key issues for the CFSP in the years to come. The enlargement will create a sense of solidarity between countries which, until the end of the Cold War, were members of two rival camps. *The Advisory Council recommends that the treaties of accession should include a declaration of solidarity between the old and new members of the European Union.*

V.2 Foreign policy

Over the past few years, opposing interests and views have often made it extremely difficult for 15 Member States to reach agreement on foreign policy. One of the examples is the disagreement on the human rights situation in China which arose in the UN Commission on Human Rights. *The Advisory Council believes that there are good reasons for the Union to pursue an active and wide-ranging foreign policy in the future; this policy should encompass human rights and relations with developing countries in addition to political relations in general.*

Partly for reasons connected with the enlargement of the Union, the Treaty of Amsterdam includes a number of articles aimed at facilitating the decision-making process. Whereas, in the past, decisions normally needed to be taken on the basis of unanimity, Article J.13 of the Treaty of Amsterdam enables decisions on 'joint actions' and 'common positions' to be taken by a qualified majority, provided that the Member States have already agreed on a 'common strategy'. There is an added qualification, however, in that the decision in question needs to have the backing of at least two thirds of the Member States in order to proceed. Moreover, the same article states that Member States can block decisions taken by a qualified majority of votes if they oppose the decisions 'for important and stated reasons of national policy'. We shall have to wait and see whether the principle of decision-taking by qualified majority will lead to a more active CFSP, or whether the right of veto which has now been formally granted to the Member States will instead permanently paralyse the CFSP.

The introduction of the principle of 'constructive abstention' represents another attempt to develop a more effective foreign policy for the Union. Under Article J.13, the fact that a Member State abstains from voting does not in itself constitute grounds for not taking a decision. This provision allows a decision to be taken even if a number of Member States are against it and do not wish to participate in the resultant action. This enables 'coalitions of the willing and able' to be formed, i.e. those Member States which wish to go beyond the CFSP are empowered under the second pillar of the Treaty to join forces in order to do so. This right has been given an extra dimension in the light of the enlargement of the Union with the accession of countries from Central and Eastern Europe.

These all represent means of promoting an effective CFSP by adapting certain procedures. However, there are also other means of attaining the same goal, and one of these is the decision taken to appoint the Secretary-General of the Council as the Union's 'High Representative for the common foreign and security policy'. The 'High Representative' will be placed in charge of a special 'Policy Planning and Early Warning Unit'. *The Advisory Council believes that one of this Unit's jobs in the years ahead should be to cater for the*

extra dimension created by the enlargement of the Union, including helping to create the conditions which are needed for good relations with the countries adjoining the Union in its enlarged state.

V.3 The role played by the President of the European Commission with regard to the CFSP

We have already made a number of recommendations, in Section V.1 above, in relation to the UN Security Council and the declaration of solidarity. In Section V.2, we described the links between the various aspects of foreign policy and made various recommendations on the Policy Planning Unit and the High Representative. The Advisory Council believes that all these recommendations are likely to be more effective in practice if it becomes customary for the President of the European Commission to be informed and consulted on standpoints which are to be adopted in the Security Council, and also in organisations such as the WEU and NATO. Obviously, such a practice of information and consultation already exists with regard to the CFSP and the European Union. If it were given a broader basis, it would make it easier for the President of the European Commission to give a public explanation of the relation between the role played by the European Union and that played by its individual Member States.

V.4 Security policy

One of the chief reasons for enlarging the Union by admitting countries from Central and Eastern Europe is the fact that this will promote stability in Europe. This means that the enlargement of the Union should be welcomed from a security standpoint. One of the key issues in relation to the CFSP ensuing from the accession of countries from Central and Eastern Europe is how their accession will affect both the security of the Union as a whole and their own security, and how to ensure that stable relations are maintained with the countries bordering on the new, enlarged Union (such as the Russian Federation, Belarus and Ukraine). One of the problems here is the question of the Central and East European countries' membership of the various international organisations, viz. the EU, the WEU and NATO. The Advisory Council's first report, entitled *An Inclusive Europe*, stated that 'the basic principle should be that countries that are EU Member States should be able to decide for themselves which security structure they wish to belong to'. The report went on to point out, however, that 'greater convergence between the EU, the WEU and NATO would be desirable from the point of view of developing a common security policy for the EU'.

The situation at present is that there is no convergence, either between the EU and the WEU or between the EU and NATO (see Annexe II). Whilst not all members of the Union are members of the WEU and NATO, all 'full' members of the WEU are 'full' members of NATO. *The Advisory Council takes the view that all countries which are members of the WEU should automatically become members of NATO.* This is because, under Article 5 of the WEU Treaty, NATO is responsible for implementing the security guarantee agreed in the framework of the WEU. Without NATO, the WEU cannot give any security guarantees. This means that candidate countries which are not yet members of NATO should not yet be granted 'full' membership of the WEU.

Agreement has now been reached within NATO on the accession to NATO of Hungary, Poland and the Czech Republic. These countries will join NATO before they join the European Union, as NATO will be enlarged before the EU is enlarged. Because both the WEU and NATO provide guarantees for their members' security, the security of these future

Member States of the EU is guaranteed. The situation is different with regard to Estonia, however. Given that this country is one of those which are set to join the EU but is not part of the group of countries which are due to join NATO, it is not clear how the security of Estonia can be guaranteed. As long as Estonia (and also Slovenia, although the latter's accession to the EU, the WEU and NATO is less controversial) is not a member of the WEU and NATO, it is not possible to guarantee its security in the same way as the security of the other Member States is guaranteed. *The Advisory Council believes that, in view of the sense of solidarity to which reference has already been made, all available political means should be used to prevent the security of a Member State from coming under threat. The policy pursued in this area should also be aimed at maintaining constructive and systematic links with the neighbouring countries.*

In the Advisory Council's view, it is desirable that future members of NATO should also join the WEU when they become members of the EU. The countries concerned in the first instance are those to which an undertaking has been given that they will be admitted to NATO, i.e. Hungary, Poland and the Czech Republic. These three countries should also join the WEU if the institutional structure is not to become even more fragmented than it already is. It is important not to follow the example set by Denmark, which is a member of NATO without being a member of the WEU. Future Member States of the EU should be required to give an undertaking that they will join the WEU if they become members of NATO.

Finally, there can be no doubt that, even once the Union has been enlarged, the CFSP will continue to be a matter for intergovernmental decision-making for some considerable time to come. Although this is not necessarily conducive to the effectiveness of policy, it does satisfy the genuine need felt by many Member States to preserve this highly visible aspect of their sovereignty. Nonetheless, for new Member States, the mere fact of being a member of the EU will have a stabilising effect on both socio-economic and political developments.

In the light of the flexibility clause included in the Treaty of Amsterdam, it is worth investigating whether a 'coalition of the willing and able' within the EU could form a more tightly knit unit in the field of the CFSP[13].

13 On 27 October 1998, the Minister of Foreign Affairs, the Minister of Defence and the Minister for Development Cooperation announced at a meeting with the Advisory Council that they would be asking for the submission of an advisory report on the security situation, in connection with the preparations for the new Defence Review. In this context, the Advisory Council will be able to discuss the relationship between the CFSP and the development of a European defence policy, partly in the light of the views recently expressed by the UK government in this connection.

VI Conclusions and recommendations

On 12 June 1997, the Advisory Council on International Affairs (Advisory Council) was asked to produce two reports on the enlargement of the European Union. In October 1997, the Advisory Council published the first of these reports, entitled An Inclusive Europe. The present report, entitled *An Inclusive Europe II*, discusses a number of points connected with the issue of enlargement.

As far as *Economic and Monetary* Union is concerned, the Advisory Council believes that the use of a transitional regime will encourage prospective Member States to achieve the necessary convergence. If a transitional regime is agreed, it should incorporate a timetable stating when any restrictions on capital movements are to be lifted. The bans on monetary financing and on privileged access to financial institutions[14] should be strictly applied in all situations, given that a healthy state of government finances coupled with the absence of excessive deficits are key elements in the convergence process that is needed to prepare the way for accession to EMU.

The fact that countries which are not adopting the euro will have a greater degree of political freedom may have an adverse impact on the economic and monetary situation in the Union. The Advisory Council takes the view that, when the third stage of EMU commences, the Union will have to decide how best to deal with this situation, so that Member States which have discarded their own currencies in favour of the euro are not at a disadvantage compared with those which are not prepared to take such a step.

As regards the question of *institutional capacity*, the countries of Central and Eastern Europe will need to do more than simply accept and enforce the existing *acquis communautaire.* For this reason, the Accession Partnerships adopted by the Council on 30 March 1998 were right to identify the need for strengthening the institutional and administrative capacities of the states in question as being one of the short-term and medium-term priorities. This includes such things as improving the various regulatory procedures and bodies, strengthening the judicial system and the organisations responsible for border controls, the police, the ministries and courts, enhancing the legislative process and training judges in community law.

The Advisory Council adheres to the basic principle that new Member States must accept the *acquis communautaire.* The Advisory Council proposes that more funds should be allocated to the pre-accession strategy as a means of showing that the current Member States and the acceding countries of Central and Eastern Europe have a shared responsibility for the adoption of the *acquis communautaire.* Under the proposals put forward by the European Commission, ECU 7 billion of the ECU 45 billion earmarked for the acceding states is intended for the pre-accession stage, while ECU 38 billion is available for spending during the period (until 2006) following their accession. In formulating this proposal, the European Commission assumed that Estonia, Hungary, Poland, Slovenia and the Czech Republic would join the European Union in 2002. It is not clear, however, whether it would be wise to distribute the funds in this way, particularly as it is looking increasingly likely that the countries in question will not be joining the European Union until a later date. Only a relatively small amount has been allocated to the pre-accession stage compared with the amount that is to be spent during the period after accession.

14 The term 'privileged access' means that governments oblige financial institutions to lend them money to meet their financing requirements.

Because it is so important that the new Member States from Central and Eastern Europe are prepared in good time for adopting the *acquis communautaire*, more funds should be earmarked for the pre-accession stage. The Structural Funds could form a prime source of such funding, since they were established precisely for developing the governmental and administrative capacity of the Central and East European countries and thus placing them in a better position for adopting the *acquis communautaire.*

It is clear from practical experience that the adoption of the *acquis communautaire* should be seen as a dynamic process rather than as a static incident. It is inevitable, given the relative underdevelopment of the candidate countries in Central and Eastern Europe in terms of economic growth and governmental refinement, that considerable use will need to be made of transitional provisions. How long the transitional period should be is also a matter that will need to be decided on a case-by-case basis. The Advisory Council is of the opinion that a balance will need to be sought between the desire to minimise the number of exemptions and derogations granted on the one hand, and the risk of overestimating the ability of the new Member States to implement the *acquis communautaire* on the other, i.e. the possibility of expecting too much from them.

The question of the adoption of the *acquis communautaire* should not lead to the misunderstanding that this is a matter which is of concern only to the prospective Member States from Central and Eastern Europe themselves. The Advisory Council believes that it is a shared responsibility, affecting both those countries which wish to join the European Union and its current members. In no circumstances should a desire to see the adoption of the *acquis communautaire* in full lead to the postponement of the accession of Estonia, Hungary, Poland, Slovenia and the Czech Republic. Such a negotiating strategy would be inconsistent with the prospect which has been held out to these countries of EU membership within a period of five to seven years; nor would it do justice to the political significance of the next wave of enlargement.

The Advisory Council believes that deferring the accession of countries from Central and Eastern Europe (and possibly rejecting their membership applications entirely) on the grounds that the countries in question are not able to enforce the *acquis communautaire* in full would not be in the interests of the Union in its intended future constellation. At the end of the day, therefore, the Union will need to accept that countries can become full members without having adopted the *acquis communautaire* in its entirety.

The existing opt-out clauses in the Treaties of Maastricht and Amsterdam were designed for a number of specific situations. The Advisory Council has discussed the question of the future policy on opt-outs. There are a variety of good reasons for adopting a more flexible approach, e.g. in order to deal with a situation in which a country has committed itself firmly to membership of the Union, but is unable (either more or less permanently or at least for a very long time) to accept certain parts of the *acquis communautaire*. If the acceding countries were given a choice, thus enabling them to exert more influence over their own destinies, this would help to strengthen political support for enlargement. Obviously, any opt-out should not include those features of the *acquis communautaire* which are essential to the effective operation of the single market, such as competition policy and trade policy. All things considered, the Advisory Council has decided not to make a general recommendation on the inclusion of opt-out clauses, believing instead that any requests for opt-outs should be assessed on their individual merits. It is clear that, from a broad Community perspective, the question of opt-outs should be approached with caution.

As far as the *Common Agricultural Policy* (CAP) is concerned, the Advisory Council believes that the reforms should be both intensified (within those sectors to which they already apply) and broadened (to encompass other sectors), for the following reasons:

- so as to prevent the imminent formation of surpluses, especially of cereals and beef;
- so as to anticipate the measures to liberalise trade which are likely to ensue from the forthcoming WTO (World Trade Organisation) talks;
- so as to facilitate the integration of new Member States;
- so as to retain access to global markets.

The European Commission takes the view that additional action needs to be taken to supplement the current policy, notably by prioritising rural development. The Advisory Council believes, however, that, if the subsidiarity principle is correctly applied, the promotion of rural development should be regarded as being the responsibility of the Member States themselves and not of the European Union.

The Advisory Council sees only one solution for the long term, especially for the period after the expiry of the transitional period. This would be to reduce the level of income support to an EU-wide basic level, which individual Member States could then top up to a given maximum, provided that they met a number of predefined conditions. Such national top-up schemes would have to take account both of the relative prosperity of the Member State in question and of the cost of living in that state.

Hardly any attention has been devoted to an analysis of the *social aspects* of enlargement, and this is puzzling for a number of reasons. The first is the announcement made by the European Council that employment is to be a top-priority issue within the European Union. The accession of East European countries is bound to affect employment both in the current Member States and in the acceding countries themselves. A second reason for paying more attention to the social aspects of enlargement relates to the political debate now taking place on the free movement of workers and its impact on the labour markets in the current Member States. In Germany in particular, a growing body of public opinion is in favour of instituting a transitional period for the free movement of workers from the new Member States, in order to protect the current Member States from a flood of East European labour. The Netherlands would not appear to require any 'protection' of this sort, as Dutch workers are unlikely to be displaced by cheap East European workers. This is because the fundamental principle underlying the free movement of workers is that employers in one Member State may not discriminate against employees from another Member State, who are therefore entitled to the same pay as employees from the 'home' Member State. In spite of the understandable objections raised by Germany, the best option would seem to be to encourage all Member States to enact clear legislation on minimum wages, with the Member States themselves bearing the primary responsibility for preventing the disruption of their own labour markets. There is a third reason why social aspects need to be given greater emphasis, and this relates to the question of finality. It is precisely the high European standard of living and the European social model which are regarded as the characteristic features of the Union, which set it apart from Japan and the US. The European model consists of national systems supplemented by a framework of European legislation regulating the free movement of workers, by standards on the equal treatment of men and women, by policies on the protection of health and safety at work, and by various provisions on matters such as employees' rights to information and consultation. The enlargement of the Union will inevitably have an impact on the development of the European social model.

One of the more striking aspects of the Commission's proposals for the distribution of the *Cohesion and Structural Funds* is that the current Member States will continue to be the Funds' prime beneficiaries. In the Advisory Council's opinion, this does not do justice to the gap in economic development that exists between the countries of Central and Eastern Europe and the current Member States. The Advisory Council therefore advises the government not to support the adoption of the proposals put forward by the European Commission in this respect, and instead to press for a higher rate of degression in relation to the current Member States which are the beneficiaries of the Funds at present, so that a corresponding amount can be made available for those regions of the new Member States which qualify for support. This would allow the Funds to be used in a credible manner to support the efforts made by the new Member States to adopt and apply the *acquis communautaire* in practice. The Commission claims that the aid should be subject to a ceiling of 4 percent per annum because of the limited ability of the Central and East European countries to absorb such additional funding. The Advisory Council is of the opinion that this ceiling is too static and is based too much on budgetary and distributional considerations. It would be better if a more dynamic approach were to be adopted, the objective of which would be to increase the countries' absorption capacity by strengthening their institutional capacity. If more funds were spent on strengthening their institutional capacity, it could be agreed, for example, that the aid intended for the countries of Central and Eastern Europe could be increased by 10 percent per annum during the period from 2000 to 2006.

In other words, there are good reasons for allowing the countries of Central and Eastern Europe to benefit more (albeit degressively) from the Cohesion Fund than the current Member States.

In conclusion, the Advisory Council feels it is vitally important that Agenda 2000 should lead to a different strategy than that envisaged by the Commission. Specifically, the Union should decide to gradually reduce the flow of funding and, in implementing the results of the fundamental spending review, should allocate considerably more funding to relevant regions in the candidate countries. This would help to create a realistic prospect of both accession and adoption of the *acquis communautaire*. The Advisory Council's reasons for urging such a course of action are based not only on political idealism, but also on a conviction that it will lead to a new economic dynamism and growth in the European Union.

As regards the way in which the Union is *funded,* the 1998 coalition agreement is based on an assumption that the Netherlands will be receiving a larger amount from EU funds while its contribution will be reduced by an amount increasing to ECU 1.3 billion in 2002. However, such a situation can arise only as a result of negotiations on a range of issues, some of which are subject to the unanimity requirement. It is at the very least presumptuous to take it for granted that such negotiations will definitely generate the desired quantitative result. The Advisory Council takes the view that the problems surrounding changes in the net positions of the 15 current Member States should not be allowed to hamper the achievement of further steady progress in the negotiations, culminating in the accession of the new Member States.

The enlargement of the Union will also have an impact on its *institutional structure.* The Advisory Council believes that a limit should be imposed on the number of Commissioners in order to ensure that the Commission is still able to operate effectively, and that this limit should be within the range of 10 to 15. This necessarily means that it would no longer be possible for each nationality to be represented on the Commission. The

Advisory Council is of the opinion that this should also apply to the large Member States, which should not be guaranteed a permanent seat on the Commission.

The recent proposal made by 'Notre Europe' (an institute headed by Jacques Delors)[15] for the President of the Commission to be appointed on a more political basis would help the Union to achieve its goal of strengthening its democratic legitimacy and turning remoteness into familiarity.

The Advisory Council is in favour of retaining the present system of weighting of votes in the Council, by which the Member States are divided into six clusters[16]. This would result in the continuation of the stable relations which the Member States have enjoyed during the past few decades. The Advisory Council is of the opinion that the acceding countries should also be placed in these clusters, according to their population sizes. This would mean allocating Poland (which is comparable with Spain) 8 votes, the Czech Republic and Hungary 5 votes each, and Estonia and Slovenia 3 votes each. In order to prevent the relatively small Member States from being over-represented in the decision-making process (given the increase in their number), the large Member States could be allotted a larger number of votes.

The Advisory Council takes the view that the EP should enjoy the right of codecision as a general principle, and that this should also apply, for example, to the framework regulations for the CAP. This principle should be abandoned only in exceptional circumstances. As regards the EP's budgetary powers, the Advisory Council believes that no distinction should be made any longer between 'compulsory' and 'non-compulsory' expenditure, and that the EP should also be entitled to amend proposals relating to spending on the CAP. In order to exercise its power of control effectively, the EP should be empowered not only to remove the Commission as a whole from office, but also to dismiss individual Commissioners. This would be a logical move once the Commission no longer consists of representatives from all the various Member States.

The Advisory Council believes that, in order to improve the credibility of the EP, the legal status of MEPs should be harmonised and that the Parliament's attempts to prevent the system of allowances from being abused should be supported.

15 Under this proposal, each of the European political parties (or groups of such parties) would designate one of the candidates on its list for the European elections as being its preferred candidate for the presidency of the European Commission. This would allow voters to express a preference for the presidency of the Commission. The assumption is that the European Council, when appointing the President of the Commission, would be unable to ignore the candidate who had amassed the greatest support in the EP elections, particularly since the President of the Commission also needs to have the confidence of the majority of members of the EP. This proposal could be implemented without any Treaty amendments, and would represent the first step on the road to an elected President of the European Commission.

16 The scale of weightings is as follows at present:

10 votes:	Germany, France, Italy and the UK;
8 votes:	Spain;
5 votes:	Belgium, Greece, the Netherlands and Portugal;
4 votes:	Sweden and Austria;
3 votes:	Denmark, Finland and Ireland;
2 votes:	Luxembourg.

The Presidency of the Union is held in turn on a six-monthly basis by each Member State. The present situation, with a 15-member Union, is that each Member State holds the Presidency every seven and a half years. If the present formula is retained, future enlargements will mean that the gap between each Member State's tenure of the Presidency will get longer and longer. This is not conducive to the effective functioning of the Presidency. The Advisory Council takes the view that a system of rotating the Presidency of the Union will no longer be effective once the Union consists of 20 to 25 Member States. The Advisory Council is therefore in favour of adopting a system by which a President is appointed for a longer period (i.e. at least two years) and is supported by the Council's General Secretariat.

Meetings of the Council of Ministers are prepared by the Committee of Permanent Representatives of the Member States (Coreper). To date, this Committee has been chaired by one of its members, viz. the representative of the Member State currently holding the Presidency. If the system were changed so that the Presidency was held on a more permanent basis, Coreper should be chaired by the Secretary-General of the Council[17].

The Advisory Council's judgement on the *Common Foreign and Security Policy* (CFSP) is that, although the Union's inability to perform an effective role has not had any disastrous effects on its own functioning, it is regrettable, in the light of the Union's wish to become a key player on the global political stage, that it has not been able to formulate a credible CFSP. The Advisory Council believes that there are good reasons for the Union to pursue a more active and more wide-ranging foreign policy in the future; this policy should encompass human rights and relations with developing countries in addition to political relations in general.

In the Advisory Council's view, it is desirable that future members of NATO should also join the WEU when they become members of the EU. The countries concerned in the first instance are those to which an undertaking has been given that they will be admitted to NATO, i.e. Hungary, Poland and the Czech Republic. These three countries should also join the WEU if the institutional structure is not to become even more fragmented than it already is. It is important not to follow the example set by Denmark, which is a member of NATO without being a member of the WEU. Future Member States of the EU should be required to give an undertaking that they will join the WEU if they become members of NATO.

In the light of the flexibility clause included in the Treaty of Amsterdam, it is worth investigating whether a 'coalition of the willing and able' within the EU could form a more tightly knit unit in the field of the CFSP[18].

17 The Advisory Council feels that there would no longer be any need for the Presidency of the Council of Ministers to be held on a longer-term basis if the proposal made by 'Notre Europe' (discussed in Section IV.1) were to be adopted.

18 On 27 October 1998, the Minister of Foreign Affairs, the Minister of Defence and the Minister for Development Cooperation announced at a meeting with the Advisory Council that they would be asking for the submission of an advisory report on the security situation, in connection with the preparations for the new Defence Review. In this context, the Advisory Council will be able to discuss the relationship between the CFSP and the development of a European defence policy, partly in the light of the views recently expressed by the UK government in this connection.

Annexe I

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

Date: 12 June 1997 Ext. no.: (348) 6212 Ref.: DIE/AB-526/97

Unit: European Integration Department
Re: Request for advisory report on enlargement of the European Union

We should like to put before you a request for an advisory report on the enlargement of the European Union.

Enlargement is presenting the European Union with a historic challenge. The aim is clear: a stable, democratic, and prosperous Europe, for which six countries laid the foundations in Rome 40 years ago. Ten associated Central European countries, Cyprus and Turkey have applied to accede to the European Union. Norway, Switzerland and Malta may also be regarded as candidate countries, although a majority of the people of each of them has voted against joining the EU for the time being.

Enlargement has been discussed at a number of meetings of the European Council:

- Copenhagen (June 1993): **the criteria**
  The Council concluded that a country may accede to the European Union if it has stable institutions guaranteeing democracy, the rule of law, human rights and respect for the rights of minorities, if it has a functioning free market economy and can cope with competition within the EU. Candidate countries should also assume the obligations of membership and endorse the EU's political, economic and monetary objectives;
- Essen (December 1994): **the strategy**
  The Council concluded that accession negotiations with Cyprus and Malta (note: in November 1996 the people of Malta voted against accession for the time being) should begin six months after the conclusion of the IGC. The structured dialogue was also initiated;
- Cannes (June 1995): **the resources**
  The Council concluded that the financial resources for support to the process of social transformation in the countries of Central Europe via the PHARE programme would be linked to the duration of the EU's own resources decision;

– Madrid (December 1995): **the calendar**
  The Council concluded that accession negotiations with Malta and Cyprus would begin six months after the conclusion of the IGC and expressed the hope that the first phase of negotiations with Central European countries would coincide with those with Cyprus and Malta. The Council also asked the Commission to issue a number of reports and documents shortly after the completion of the IGC:
* separate opinions *(avis)* on the applicant states, containing an analysis of the current situation in the state in question and an evaluation of its expected progress before accession;
* an impact study on the effects of enlargement on Community policy, particularly agricultural policy and structural policy;
* an overview of enlargement to supplement the avis and the impact study;
* a communication on the future financial frameworks of the EU, taking account of prospective enlargement.

– Florence and Dublin: these meetings of the Council confirmed the time frame for the enlargement process laid down at Madrid. The Commission assured the Council that the documents referred to above would be available immediately after the closure of the IGC. The Council meetings also welcomed the Commission's plans for a general reinforcement of the pre-accession strategy.

The Council will discuss these documents at the special enlargement summit which the Luxembourg Presidency plans to hold on 16 and 17 October 1997. On the basis of this, the European Council, meeting in Luxembourg in December 1997, will decide *inter alia* on the modalities for the accession negotiations. The enlargement process will then probably be launched with a group photograph. The Council will then adopt a negotiating mandate for the Presidency, supported by the Commission.

We would therefore request the Advisory Council to advise the Government on the enlargement of the Union and the strategy to be adopted, taking account of the above-mentioned Commission documents. The Advisory Council should compile, before October 1997, a list of the countries whose accession would be of most benefit to the Netherlands in economic, financial and political terms. It could also outline the advantages and disadvantages associated with the accession of individual countries, and indicate the relevance of the timetable.

By December 1997, the Advisory Council should answer the following questions:
– What role should the Netherlands play in the enlargement process?
– Should the Netherlands support a particular country or group of countries, such as the Scandinavian countries or the Baltic states?
– The wording of the Copenhagen criteria is fairly general; what internal and external conditions must at all events be met by countries wishing to accede?
  * Internal: what directives must the countries take on board? Only those in the fields of economic and financial affairs, agriculture, the environment, customs duties and indirect taxes? Or also those in the fields of industry, competition, social affairs, transport, audio-visual affairs, telecoms, energy and consumer protection?
  * External: How can the Union ensure that tensions relating to cross-border minority issues and potential border disputes are not brought into the Union on the accession of the applicant countries?
– Should a new Member State be able to exercise a veto in respect of later accessions?
– How can enlargement make the maximum contribution to stability in Europe and what is the relationship between EU enlargement and NATO enlargement?
– What are the potential consequences for European integration of enlargement? How can the Union cope with possible consequences?

One of the principal questions to be considered is that of relations with countries not included in the first group to accede. We would ask the Advisory Council to advise us, before December 1997, on the minimum elements to be included in a reinforced pre-accession strategy. Should the strategy be concerned more with the countries which need one last push to be able to accede, or should the focus rather be on countries that cannot form part of the first group because they have not yet accepted EU legislation? Is the idea of a permanent conference in combination with the PHARE programme, which since March 1997 has been fully concerned with preparing candidate states for accession, sufficient consolation for those left out of the first wave? Or should the EU come up with a new idea?

The Advisory Council's report will be of great help in determining the Netherlands' standpoint for the European Council meeting in Luxembourg in December 1997, where enlargement and the enlargement strategy will be at the top of the agenda.

(Signed)

H.A.F.M.O. van Mierlo
Minister of Foreign Affairs

(Signed)

J.J.C. Voorhoeve
Minister of Defence

(Signed)

J.P. Pronk
Minister for Development Cooperation

(Signed)

M. Patijn
State Secretary of Foreign Affairs

Annexe II

Members of the EU, WEU (including associate partners) and NATO (including members of the partnership for peace)

Country	EU	WEU	NATO
Belgium	■	■	■
Denmark	■	❑	■
Germany	■	■	■
Greece	■	■	■
Spain	■	■	■
France	■	■	■
Ireland	■	❑	
Italy	■	■	■
Luxembourg	■	■	■
Netherlands	■	■	■
Austria	■	❑	❍
Portugal	■	■	■
Finland	■	❑	❍
Sweden	■	❑	❍
United Kingdom	■	■	■
Estonia	24 November '95	✻	❍
Hungary	31 March '94	✻	❍
Czech Republic	17 January '96	✻	❍
Poland	5 April '94	✻	❍
Slovenia	10 June '96	✻	❍

■ = member
❑ = observer
date = date of membership application
✻ = associate partner
❍ = member of partnership for peace

Annexe III

Key to abbreviations

CAP	Common Agricultural Policy
CFSP	Common Foreign and Security Policy
Coreper	Permanent Representatives Committee
ECB	European Central Bank
ECU	European Currency Unit
EC	European Community
EMS	European Monetary System
EMU	Economic and Monetary Union
EP	European Parliament
EPC	European Political Cooperation
EU	European Union
EURO	Common European currency
GNP	Gross National Product
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation
PHARE	EU aid programme for Central and Eastern Europe
UK	United Kingdom of Great Britain and Northern Ireland
Union	European Union
US	United States of America
WEU	Western European Union
WTO	World Trade Organisation

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4 UNIVERSALITY OF HUMAN RIGHTS AND CULTURAL DIVERSITY, *June 1998*