THE BENELUX: THE BENEFITS AND NECESSITY OF ENHANCED COOPERATION

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Foreword

On 11 October 2006, the Advisory Council on International Affairs (AIV) was asked to produce an advisory report on Benelux cooperation. The reason for the report is that the treaty on which the Benelux Economic Union is based comes up for renewal for the first time in 2010. Negotiations on the mode and form of continued cooperation between the Benelux countries are due to begin in spring 2007. The AIV was therefore asked to submit the report in early February. The request for advice is reproduced in Annexe I.

This report was prepared by a joint working group chaired by Professor J.Q.T. Rood, a member of the European Integration Committee (CEI). The other members were F. Korthals Altes (chair of the AIV), Professor M.G.W. den Boer, Dr W.F. van Eekelen, M.G. Wezenbeek-Geuke (members of the CEI) and the external member J. Schotte, until recently on the staff of the Benelux Secretariat-General. Administrative liaison was provided by M. van Rossum and B. Bruijn of the Western and Central Europe Department, Western Europe Division (DWM/WE). The executive secretary was Dr S. Volbeda, assisted by trainees E. van der Bijl and M. Keizer.

In preparing the report, the working group spoke to a number of experts, whose names are listed in Annexe II. The AIV is grateful for their contribution and wishes to thank them for their willingness to share their views with the working group.

The AIV finalised this report on 2 February 2007.

I Introduction and questions addressed in the report

The reason for this report is that the Treaty establishing the Benelux Economic Union comes up for renewal for the first time in 2010.[1] As the request for advice makes clear, the government has already decided in favour of continued Benelux cooperation. The reason given for this decision is the practical added value of this cooperation within the Benelux Economic Union (BEU) and that fact that the Benelux provides a platform for Benelux political cooperation (BPC).

The request for advice asked the following questions:

1. Benelux countries work together on both practical (BEU) and political (BPC) grounds. What, in the AIV's opinion, is the added value of the Benelux partnership in each of these areas?
2. Which fields of activity and subjects would lend themselves to prioritisation in the Benelux partnership?
3. What changes would the Benelux Economic Union, as an organisation, need to undergo to be able to function effectively once substantive prioritisation has taken place?
4. What role does the AIV see Benelux organisations such as the Benelux Interparliamentary Consultative Council and the Benelux Court of Justice fulfilling?
5. Based on its response to questions 1 to 4, can the AIV advise on the most suitable international framework within which to continue the Benelux partnership?

In this connection it was stated that, as research was already being conducted into these areas, the AIV need only reply briefly to Questions 2, 3 and 5. More extensive replies were requested to Questions 1 and 4.

This report therefore focuses on the added value of the Benelux as a partnership, particularly for the interplay of forces in the EU, and the role of the BEU institutions within it. However, the AIV believes that the replies to these questions also depend on an understanding of the priority topics and areas of work referred to in Question 2. The Benelux tasks will, after all, partly determine the role of the institutions and the changes that may need to be made to their organisation and powers.

A second consideration here is that the Benelux partnership is constantly changing. This was also the starting point for the report by the Committee of Wise Persons.[2] The Committee of Ministers, the highest political institution in the Benelux, redefined the tasks of the Benelux Secretariat-General on the basis of this report.[3] The report stated that the BEU's original tasks and goals had either been achieved or been subsumed into the European integration process. It concluded that the Benelux, which had played a pioneering role in Europe in many different fields (a role that had largely comprised the partnership's original goals), had now lost much of its relevance. At the same time, it noted that the organisation

1 This was signed on 3 February 1958 and has been in force since 1 November 1960. For an unofficial English translation of the full text of the treaty, see < http://www.benelux.be/en/rgm/rgm_unieverdrag.asp >.

2 Council of the Economic Union, *Advies van de Raad van de Benelux Economische Unie aan het Comité van Ministers betreffende de uitvoering van het Rapport van het Comité van Wijzen "De Benelux, opnieuw bezien",* R (95) 4, Brussels, 9 November 1995.

3 The report was adopted by the Committee of Ministers on 20 November 1995.

had taken on new tasks, particularly support for practical forms of cooperation such as cross-border cooperation and internal security policy.

In 2007 the tasks and functions of the Benelux are still changing. Economic integration has increasingly become a matter for the European Union (EU). In response to this, the Benelux has continued to adapt and take on new areas of work. Accordingly, any assessment of its future will depend on understanding this transformation process. An important question here is whether, and if so to what extent, BEU cooperation can be of service to cooperation in the broader context of the EU. This advisory report therefore pays considerable attention to the question of which areas of work should be given priority for Benelux cooperation, whether the existing partnership has added value and whether there are new areas in which BEU cooperation would be expedient. This critical appraisal of the organisation's range of tasks is particularly desirable since, as the 1995 report also indicated, the credibility and quality of cooperation (and their public visibility) will benefit if the Benelux divests itself of tasks and areas of work that no longer have any added value.

The AIV also takes the view that the tasks carried out through the BEU should be clearly distinguished from political cooperation between the partners (BPC). BEU cooperation is based on the Treaty establishing the Benelux Economic Union. BPC is separate from this and will therefore be dealt with separately in this report.

With regard to the position of the Benelux, the AIV has set out from the premise that its functioning should be seen within the broader context of how other multilateral, regional and bilateral links function. This means that Benelux cooperation can be analysed at various levels:

- within the broader context of European cooperation, in which both BEU cooperation (pioneering role) and BPC (joint action) have a part to play;
- as an exclusive partnership between the three parties to the treaty – a form of cooperation whose uniqueness is partly based on the fact that it is explicitly acknowledged in Article 306 of the EC Treaty;[4]
- as a framework for cooperation between Benelux and other countries (also referred to as 'Benelux-plus');
- as a support for the many forms of bilateral cooperation between the Benelux states;
- as a framework for relations with other regional partnerships such as the Nordic Council,[5] the Baltic Assembly[6] and the Visegrad Group.[7]

In each case the question is whether BEU or BPC cooperation between the three countries has added value. In the AIV's view, this question is especially relevant to the potential role of the Benelux in bilateral cooperation.

The AIV agrees with the government that continued Benelux cooperation is desirable. As the rest of this report will make clear, the AIV likewise sees added value (both practical and political) in Benelux cooperation. However, the AIV believes that there are serious questions

4 *The Treaty establishing the European Community* (EC), which came into force on 1 January 1958.

5 Denmark, Finland, Iceland, Norway and Sweden.

6 Estonia, Latvia and Lithuania.

7 The Czech Republic, Hungary, Poland and Slovakia.

about the effectiveness of the existing Benelux union. In the past the Benelux had a clear mission under the terms of the treaty, but as of 2007 it appears to be searching for a new position and a new role. Its ability to adapt to changing circumstances is a good sign, but its output appears to be little more than a succession of disconnected decisions. The resulting fragmentation of its range of tasks and available capacity has contributed to its relative invisibility as an organisation.

This is partly the result of the changes to which BEU cooperation has been particularly subject. However, the AIV also believes that the problems referred to are due to a lack of political commitment and strategic guidance on the part of the Benelux states. In the AIV's view, these have been lacking in recent years, and the Benelux states have not done enough to advance a vision of the Benelux as a practical and political partnership.

Accordingly, the decision to continue Benelux cooperation – which, as already indicated, the AIV supports – can only be meaningful if the Benelux states make a more active political and administrative commitment to it and provide clearer substantive guidance. Failing this, the AIV is convinced that the Benelux partnership will become increasingly irrelevant and that its perceived added value will be lost.

Of course, the circumstances in which the Benelux has to operate have not become any easier. Belgium is an increasingly federalised state, and the three Benelux countries have recently found it difficult, if not impossible, to reach agreement on certain essential aspects of European integration. Precisely for this reason, the AIV believes closer cooperation is necessary. One aim of the recommendations in this report is therefore to secure and strengthen the political commitment of the Benelux states.

The structure of the report is as follows. Chapter II briefly reviews the history, tasks and institutions of the Benelux. Chapter III looks at practical cooperation within the BEU and identifies its priority areas of work. Chapter IV examines the significance of political cooperation between the Benelux countries. Chapter V discusses the functioning of the Benelux institutions, and specifically looks at the changes that are required if they are to function effectively. Finally, Chapter VI sums up our conclusions and recommendations, and discusses the form that the treaty amendments proposed by the AIV should take.

II The Treaty establishing the Benelux Economic Union

The original treaty

The Benelux has existed for more than sixty years. On 5 September 1944 the treaty establishing the Benelux customs union was signed in London by the Dutch, Belgian and Luxembourg governments in exile. Its purpose was to ensure free movement of people, goods and services, which the treaty stated would create 'the most favourable conditions for the establishment of an economic union'.

The first step was the elimination of internal tariffs on goods transport and the setting of uniform tariffs for goods from outside the Benelux. This free trade agreement came into force on 1 January 1948.

From 1948 to 1958, cooperation between the Benelux countries was extended step by step. In 1953 they adopted a joint trade policy, and in 1954 movement of capital between them was largely liberalised. In 1958 all the agreements and protocols were incorporated into a Treaty establishing the Benelux Economic Union. This came into force on 1 November 1960 and is still the basis for Benelux cooperation. It is due to expire in 2010. Decisions regarding its proposed extension and amendment will have to be reached no later than 2008, which means that negotiations on the subject will commence in spring 2007 and preparations at civil service level in February 2007.

At European level, the right of the Benelux to exist is acknowledged by an enabling clause in Article 306 of the EC Treaty stipulating that it must not preclude the existence or completion of regional unions between Belgium and Luxembourg (BLEU) and between Belgium, the Netherlands and Luxembourg (Benelux), to the extent that the objectives of these regional unions are not attained by application of the treaty. This means that these unions are in a privileged position in comparison with other forms of cooperation between EU member states. This enabling clause for the Benelux was also included in the draft text of the Treaty establishing a Constitution for Europe.

From customs union to economic union to community of interests

The Benelux union has undergone various changes over the years, without the 1960 treaty ever being amended.

The original purpose of the partnership was to eliminate barriers at national borders and establish free movement of people, goods and services between the three countries. Even before the treaty took effect, all internal border checks on people had been abolished and a uniform policy had been adopted at external borders. Free movement of workers created a common Benelux labour market. Checks on road traffic were also reduced to the bare minimum. This was a spectacular achievement at the time.

Meanwhile there were increasing efforts to coordinate policy in a number of areas. For example, national trademark legislation was replaced by uniform Benelux legislation. A few years later there was a similar initiative regarding designs.[8] Two joint offices were set up: a Trademarks Office and a Designs Office. A Benelux Court of Justice was also established in

8 The Convention on Trademarks was signed on 19 March 1962 and the Convention on Designs or Models on 25 October 1966.

1974. (For more on Benelux institutions, see the last section of this chapter as well as Chapter V.)

As the initiator of international economic integration in Europe, the Benelux played a pioneering role in European unification. Its achievements were often successfully adopted as models for European developments, and many Benelux tasks in all kinds of areas were later taken over by the European Community (EC). At first this was confined to trade policy and the customs union, but other forms of cooperation initiated by the Benelux countries, such as the Schengen Agreements,[9] were later adopted in the broader European context. When the Treaty of Amsterdam came into force in 1999, the Schengen Agreements were incorporated into the EU. In some sectors progress on European integration has therefore often meant the end of Benelux cooperation or its continuation in a European framework.

The Benelux has always adapted to the changing sociopolitical context. In the 1970s and 1980s, it focused on new policy fields that were not mentioned in the EC Treaty, such as the environment, nature conservation, infrastructure, spatial planning, energy and tourism. For example, spatial planning strategies were drawn up for the western and central sections of the Dutch-Belgian border, and in more general terms for the whole of the Benelux area.

Many of these new fields are highly suitable for further cross-border cooperation, which is increasingly seen as a key task. The Benelux states no longer tackle the environment, traffic, infrastructure, spatial planning, nature conservation and landscape protection as though their Benelux partners did not exist. Furthermore, there is an increasing tendency towards cooperation on the external borders of the Benelux with adjoining regions of France and Germany.

In 1995, an in-depth assessment of the future of the BEU led to changes in the Benelux's key tasks and a reorganisation of the Secretariat-General. Cooperation was henceforth concentrated in five main areas:

- political cooperation and consultation on European issues;
- cross-border cooperation;
- completion of the internal market and ongoing economic cooperation in appropriate areas;
- free movement of persons and consultation on justice, police and immigration matters;
- culture, research, education and training.

In connection with these changes, many of the committees and working parties in these areas were abolished or − if this could not be done without amending the treaty − suspended, and new committees were set up for the five areas referred to.

New tasks are regularly added to those listed above. Examples include closer cooperation on police matters, especially law and order and the fight against crime (including drug trafficking and drug tourism), which were the subject of a new Benelux treaty signed on

9 Agreements on free movement of people between Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Italy, Luxembourg, Norway, Portugal, Spain and Sweden. Schengen is the name of a village in Luxembourg where the first agreements were signed by the Benelux countries plus France and Germany on 14 June 1985.

8 June 2004.[10] Another new area is cooperation to combat major cross-border tax fraud. In addition, the new Benelux Convention on Intellectual Property came into force on 1 September 2006.[11] There is also cross-border cooperation on urgent medical care, for which the legal basis is still being drawn up. A full list of Benelux legislation can be found in Annexe V.

Treaty institutions

The Committee of Ministers and the Ministerial Working Parties and Committees
The original treaty provides for the establishment of a Committee of Ministers as the highest Benelux institution.[12] This consists of the three countries' ministers of foreign affairs, economic affairs and finance. Other ministers can attend meetings if this is relevant to the agenda. The chair rotates every six months: the Netherlands holds the chair in the second half of 2006, Belgium in the first half of 2007, Luxembourg in the second half of 2007 and so on. In the 1960s it was decided that these meetings would also be held between heads of government, as in the EU. In this connection the AIV notes that no Committee of Benelux heads of government or foreign ministers has met since 1982. There are also Ministerial Working Parties that can reach binding decisions, and at civil service level there are Committees and Special Committees[13] that work out political priorities in further detail.

The Council of the Economic Union and administrative committees
The Council of the Economic Union coordinates the activities of the various administrative committees, can submit proposals to the Committee of Ministers and supervises the administrative committees' implementation of decisions reached by the Committee of Ministers.[14]

The Board of Secretaries-General and the Secretariat-General
The Board of Secretaries-General consists of the Secretary-General and two Deputy Secretaries-General. They represent the three countries and are in charge of the Secretariat-General in Brussels. The Board supports the Committee of Ministers, the Ministerial Working Parties, the Council of the Economic Union, the Committees and the Special Committees.[15] It has had the right of initiative since 1975.

The Benelux Interparliamentary Consultative Council
Also known as the Benelux Parliament, the Interparliamentary Council advises the Committee of Ministers[16] and, among other things, discusses the latter's annual report. It consists of 21 Dutch, 21 Belgian and 7 Luxembourg members of parliament, grouped by

10 *The Treaty concerning Cross-Border Police Intervention*, also known as the Senningen Treaty.

11 The Convention was signed on 25 February 2005.

12 Articles 15a and 16-22 of the *BEU Treaty*.

13 Articles 15d and 28-32 of the *BEU Treaty*.

14 Articles 15c and 25-27 of the *BEU Treaty*.

15 Articles 15e and 33-39 of the *BEU Treaty*.

16 Articles 15d, 23 and 24 of the *BEU Treaty*.

political party rather than nationality. The Council meets three times a year in one of the three capitals.

As the international parliamentary body of an intergovernmental organisation, the Council has only consultative and advisory powers. Actual monitoring is the task of the national parliaments.

The Benelux Office for Intellectual Property (BOIP)
This Benelux organisation has its headquarters in The Hague and has replaced the Benelux Trademark Office and the Benelux Design Office.[17] The BOIP performs a similar function for the Benelux countries to a national trademark and design office. Once a trademark or design has been registered, the holder has exclusive rights to it. Other aspects of intellectual property law can also be brought within the purview of the BOIP.

The Benelux Court of Justice
The Benelux Court of Justice was set up in 1974.[18] It performs two functions: (a) interpreting Benelux legal rules, and (b) adjudicating in disputes involving Benelux civil servants.

(a) Interpreting Benelux legal rules
The Court of Justice is responsible for a uniform interpretation of those of the three countries' joint legal rules which the Court is competent to interpret under the treaty or decision of the Committee of Ministers.[19] At present these mainly concern intellectual property rights (the BOIP being responsible for registering trademarks, designs and models), third-party liability insurance for motor vehicles, movement of persons, protection of birds and penalty payments.

(b) Adjudicating in cases involving civil servants
The Court dispenses justice in disputes involving Benelux civil servants and the Secretariat-General or the BOIP.

The Court has no judges of its own, but is formed by a bench of either nine or three judges from the highest judicial bodies in the Benelux countries (in the case of the Netherlands, the Supreme Court), who meet as cases arise.[20] The advocates-general are likewise chosen from the members of the Public Prosecution Service at the highest courts.

Cases can be brought before the Court of Justice either for preliminary rulings (on questions submitted by national courts of interpretation of Benelux legal rules) or else directly (above all in disputes involving civil servants).

17 The two offices, set up under the terms of Articles 15f and 40 of the *BEU Treaty*, were amalgamated on 1 September 2006.

18 *The Treaty establishing a Benelux Court of Justice*. This treaty, which was signed on 31 March 1965 and came into force on 1 January 1974, will remain in force for as long as the BEU Treaty (Article 16.3).

19 Article 1.1 of *the Statute of the Benelux Court of Justice.*

20 Articles 3.1 and 5.1 of *the Statute of the Benelux Court of Justice.*

The Economic and Social Consultative Council and the College of Arbitrators
The Economic and Social Consultative Council, which can advise the Committee of Ministers,[21] is currently dormant, as is the College of Arbitrators.[22] The latter is responsible for settling, at the request of one or more of the partners, disputes between them on the application of the BEU Treaty and agreements concerning its goals if the Committee of Ministers fails to find a solution.[23] This means that disputes between the Benelux countries can be unilaterally submitted to the College for settlement (which may be binding) if mediation by the Committee of Ministers is unsuccessful.

The Committee of Ministers can also ask the College for advice on legal matters concerning the provisions of the BEU Treaty and agreements concerning its goals.[24] In the latter case this involves non-binding legal advice on the interpretation of the texts.

21 Articles 15h and 54 of the *BEU Treaty*.

22 Articles 15g and 41-53 of the *BEU Treaty*.

23 Articles 41 and 44 of the *BEU Treaty*.

24 Article 52 of the *BEU Treaty*.

III Cooperation within the Benelux Economic Union and future priorities

Chapter II stated that BEU cooperation has already been adapted several times to the changing sociopolitical context. Experience has shown that a dynamic approach to a range of tasks focusing on a small number of interrelated sectors is essential to respond quickly to new developments. A frequent criticism of the Benelux's current range of tasks is that, particularly owing to its diversity, there is too little focus on its main priorities and that there is a lack of political leadership.

It is difficult to say what the Benelux's range of tasks should be a few years from now. Looking back at the review of Benelux tasks carried out in 1995-1996, we see that many new ones have been added since then. The Committee of Wise Persons that prepared the restructuring did not foresee, for example, that by 2006 internal security would be such an important area of BEU cooperation, whereas other items that were included in the range of tasks at the time have lost their relevance (examples include cooperation on trade policy relating to strategic goods and anti-dumping measures).

In this connection, the extension of the BEU Treaty provides a good opportunity to consider whether the Benelux should continue to serve as a laboratory for further European cooperation. This would involve cross-border and other projects for which the EU is not yet ready, possibly in cooperation with other countries (Benelux-plus).

As already stated, practical BEU cooperation covers rather a motley assortment of tasks. The question is whether all these tasks are relevant and whether the functioning of the organisation would benefit from the elimination of certain tasks and/or reorganisation. Greater relevance could also increase the Benelux's visibility. Discussions with experts have made it clear to the AIV that in this respect the main added value of the Benelux lies in cross-border cooperation, particularly on police matters.[25]

In the AIV's view, Benelux cooperation should focus on areas in which:
- there is a clear need for cross-border cooperation;
- the Benelux has demonstrable added value due to its expertise, knowledge and experience;
- the EU member states can eventually be expected to cooperate in the area concerned;
- they are not likely to do so any time soon.

The AIV recommends that a small number of core tasks be identified in the light of these criteria. However, these should not be mentioned in the future Benelux treaty itself, but appended to it as a political declaration. This will allow the Benelux to adopt new core tasks and divest itself of old ones without having to amend the treaty. The Committee of Ministers should be given powers to make such changes. The annually adopted work programme can then be used to alter priorities among the core tasks in response to new social developments.

25 The Public Administration Council is currently investigating barriers to cross-border cooperation in the framework of the BEU treaty between local authorities in the Netherlands, Belgium and (through Benelux-plus) Germany. In this connection it is also looking at the workings of the Secretariat-General. The Council expects to submit its report at the end of 2007.

Three priority areas that will form the basis for future BEU cooperation are discussed in detail below: (1) internal security, (2) spatial planning and (3) the internal market.

(1) Cooperation on internal security

In recent years, cooperation on internal security – in the broad sense of the word – has developed into a new core task for the Benelux. It is of a highly operational nature. The main area of cooperation is justice and home affairs (JHA), but it also extends to food safety, traffic inspection, measures to combat tax fraud, etc. Cooperation on external security, in the sense of joint military action, has developed outside the framework of the BEU Treaty, although the name Benelux is sometimes mentioned in the context of bilateral or trilateral cooperation with Belgium and Luxembourg.[26]

Operational cooperation on police, justice and immigration matters – a subject of Benelux cooperation for many years – has thus gathered momentum. The Senningen Treaty[27] and the Prüm Convention[28] have now been drawn up, as has a memorandum of agreement between the national crisis centres of the three Benelux countries.[29] A series of new subsectors have been added, including drug policy, cross-border cooperation on emergencies and accidents,

26 There is extensive bilateral cooperation between Belgium and Luxembourg. The Netherlands cooperates with Belgium on naval training in the Dutch port of Den Helder. In 1996, Belgium and Luxembourg also set up the Benelux Deployable Air Task Force (DATF). This air force partnership, in which the Netherlands also takes part, is in line with broader EU plans to set up specialised task forces through bilateral and multilateral cooperation. Other examples are the Belgian-Portuguese DATF, the Spanish-Italian Amphibious Force and the European Air Group.

27 *The Treaty concerning Cross-Border Police Intervention*, of 8 June 2004, an agreement between the Belgian, Dutch and Luxembourg ministers of justice, the Belgian and Dutch ministers of the interior and the Luxembourg minister of the Force Publique concerning cooperation on police, justice and immigration matters (see *Benelux Almanak 2005*). This cooperation concerns matters such as improved exchange of information, joint analysis of cross-border crime and further operational measures such as joint patrols, exercises and training, cooperation on liaison officers, joint police headquarters in border areas, linked telecommunication facilities, joint purchases, logistic cooperation and actions in border areas (on such matters as drug laboratories and drug tourism, ram raids and burglaries involving violence, waste transport and illegal fireworks).

28 *The Prüm Convention on Enhancing Cross-Border Cooperation*, in particular to Combat Terrorism, Cross-Border Crime and Illegal Immigration, a Benelux initiative, was signed on 27 May 2005 not only by Belgium, Luxembourg and the Netherlands but also by Austria, France, Germany and Spain, and is now open for signature by other member states of the European Union (see Council Document 11910/1/05).

29 This memorandum, which was signed in 2006, deals with crisis management and disaster relief, assistance in emergencies and the appointment of liaison officers. Topics covered include the establishment and availability of secure databank networks on critical infrastructure in the Belgian-Dutch and Belgian-Luxembourg border areas, coordination of nuclear emergency plans and measures to facilitate cross-border deployment of fire fighters.

internal security policy[30] and measures to combat tax fraud.[31]

In these areas of cooperation the Benelux is ahead of the EU, and the experts consulted by the AIV consider it unlikely that the EU will catch up in the next few years. The AIV believes there is an opportunity here for the Benelux (or Benelux-plus) to extend its role as a laboratory in the years to come.

The ministers of justice and home affairs of the Benelux countries recently decided to reinforce their cooperation on internal security even further. There are plans to draw up a pragmatic Benelux security strategy, with particular emphasis on the various Benelux border (including Euregio) areas, as well as areas near the borders with France and Germany. The AIV is aware, however, that in certain cases there is more extensive cooperation between the Netherlands and Germany than within the Benelux.[32]

In the recent restructuring of Senningen consultations on JHA matters, the competent ministers in the three countries specifically agreed that the Benelux Secretariat-General will act as the secretariat. This will provide a link between the activities of the various working parties, and will encourage more centralised accumulation of knowledge. As a neutral partner, the Secretariat-General can coordinate the different positions when drawing up new operational arrangements or policy agreements. The Secretariat-General is to submit six-monthly progress reports.

Finally, there has been progress towards a joint Benelux visa policy: the three countries represent one another when issuing visas in more than 110 diplomatic missions in over 90 countries.[33]

(2) Cooperation on spatial planning

Spatial planning is a field that is particularly suitable for cross-border cooperation. Especially given the density of the infrastructure, the intensity of traffic, the economic importance of the transport sector and ecological and environmental considerations, there is an obvious need for systematic consultation on, and coordination of, policy in this area.

30 Examples are veterinary cooperation and cooperation on food safety, including closer coordination in preventing and combating diseases such as avian flu and BSE, and especially improved traceability of meat from the producer to the consumer. Future plans include joint meat-quality labelling and the creation of joint strategic reserves of various vaccines. Other examples are joint road safety campaigns, cooperation on road traffic inspection and consultation on such matters as transport of nuclear material. Finally, there is Euro Contrôle Route (ECR), an agreement dealing with road safety, compliance with road transport legislation and fair competition. This was launched by the Benelux countries plus France and Germany in 1999, and Austria, Ireland, Poland, Spain and the United Kingdom have since joined. Another nine countries have shown interest, and as a result the agreement may be incorporated into EU treaties.

31 This covers matters such as evasion of VAT when vehicles are leased across borders ('VAT carousel fraud'), misuse of telecommunication facilities (particularly involving prepaid telephone cards) and fraud in connection with remote sales. To take one example, the Parallel Warning System, set up to combat VAT and excise fraud in the transport of mineral oil between the Benelux countries, had entirely eliminated this type of fraud (which had previously amounted to millions of euros a year) by 2005.

32 Border checks in the Meuse-Rhine Euregio are a case in point.

33 There is also a joint return policy for rejected asylum seekers and illegal aliens.

The goal here is not only to find ways of coordinating national and regional policymaking, but also to make systematic efforts to ensure coherent spatial planning in a number of border areas. This has never been done before in Europe. The concept of integrated spatial planning is now being applied in three border areas: the western border area between Flanders and the south-western Netherlands, the eastern border area between the Netherlands, Flanders, Wallonia and North Rhine-Westphalia, and the southern border area between Wallonia and Luxembourg. A similar integrated approach is also being pursued in the Meuse basin (the Walloon-Dutch-Flemish Consultative Committee on the Meuse).[34]

The Benelux has gradually developed a number of legal instruments that support such cross-border cooperation on spatial planning, taking account of the differences in administrative practice and legislation on each side of the border:

- the formal Benelux consultative framework that regulates cooperation between countries, regions and linguistic communities through a number of committees (on spatial planning, traffic and transport, nature conservation and cross-border cooperation on public-law matters) as well as the committees responsible for the four border areas;
- the Benelux Convention on Nature Conservation and Landscape Protection, which governs cooperation on nature conservation projects in border areas and is aimed at both central and local authorities;
- the Benelux Convention on Public-Law Cross-Border Cooperation between Local Authorities (such as provinces and municipalities); the Secretariat-General acts here as a focal point for local authorities and helps them set up specific projects.

Over the years the Secretariat-General has developed into a centre of expertise on cross-border cooperation. Among other things, it is involved in an expert capacity in the consultations on the Rhine-Scheldt Delta. The AIV attaches particular importance to the use of the Secretariat-General's expertise on treaty law and organisational matters. Cross-border cooperation in these areas can only succeed if there is sufficient knowledge of administrative structure, organisation and powers in the neighbouring country.

(3) Cooperation on the internal market

Although EU economic integration is well advanced, it is still far from complete. Cross-border business is still impeded by national barriers, such as differences in licensing and in technical and administrative regulations.

Things that cannot yet be achieved at EU level sometimes prove feasible within the Benelux. In this sense the Benelux serves as an experimental pioneer, focusing on areas in which suitable opportunities arise and more can be done than in the EU. Such closer

34 Various pilot projects have been launched to coordinate the ecological structure in Flemish-Dutch border areas. There are also a number of urban development, public transport and goods transport projects in the eastern border area (with Germany). Walloon-Dutch-Flemish cooperation in the Meuse basin concerns the construction of a fourth lock at Lanaye and the distribution of water between Flemish and Dutch waterways. Finally, a cross-border Basic Ecological and Landscape Plan is being drawn up for the southern border area.

cooperation can take place in many different areas, including the electricity market.[35] Other potential areas include frontier workers, public health and increasing cross-border movement of care workers and patients.

Conclusion

Apart from the immediate significance of BEU cooperation, the AIV would like to point out its function as a laboratory for further European integration. Examples include the Schengen and Senningen agreements. Through Benelux-plus cooperation, this function is directly linked to the concept of enhanced cooperation at EU level, and is also justified by the enabling clause in Article 306 of the EC Treaty. Apart from encouraging enhanced cooperation at EU level, Benelux cooperation can also have practical benefits in implementing EU legislation, through coordination, further harmonisation and sharing of practical experience. However, the AIV believes that such cooperation should be confined to the core tasks (internal security, spatial planning and the internal market). This means that other tasks should be dropped.

35 In 2005 the energy ministers of the three Benelux countries, France and Germany agreed to set up the Pentalateral Energy Forum. This is a forum for grid managers, supervisors and government authorities designed to improve links between the five countries' electricity grids. The Benelux Secretariat-General acts as its secretariat. The European Commission takes part in the consultations as an observer. A similar forum for the gas market is being considered.

IV Benelux political cooperation

In addition to practical cooperation based on the Treaty establishing the Benelux Economic Union, a form of political cooperation has evolved between the Benelux partners. This Benelux political cooperation (BPC) involves joint *external* action by the Benelux countries at international level. The main aspect of BPC is the adoption of joint positions in advance of decisions at EU level. The aim here is to increase the three countries' influence on EU decisions by means of consultation and coordination of positions. However, BPC may also be applied in other international forums, such as the United Nations (UN), other regional partnerships,[36] or in cooperation at diplomatic mission level (including mutual representation and assistance).

The AIV observes that the extent of BPC has varied considerably over time, depending on the issues and the individuals involved. Periods of close cooperation at European level, in which the three countries launched joint initiatives, have alternated with sometimes quite long periods in which there was little or no special cooperation, let alone coordinated positions on European issues, or striking proposals.[37] In this connection the AIV notes that the current state of BPC is not always judged to be satisfactory.[38] It is said that consultation is insufficiently structured and that there is not enough political leadership, partly owing to differences of opinion on the course of further European integration. Examples include the conflict during the negotiations on the Treaty of Nice on the weighting of votes, Dutch annoyance at Belgian and Luxembourg support for a more independent European security and defence policy and the Netherlands' rejection of the Treaty establishing a Constitution for Europe. One frequently heard opinion is that the Benelux partners are not willing enough to set aside their own views in favour of a joint position.

Political cooperation between the Benelux countries takes place outside the formal framework of the Benelux treaty and the institutions based on it. It therefore does not involve cooperation by Benelux as an organisation, but political cooperation within a group of like-minded countries. Apart from the agreement to hold regular consultations in the run-up to EU decisions, it is not institutionalised or formalised, and the Benelux Secretariat-General plays no part in it. The fixed elements of BPC are the consultations between prime ministers before European Council meetings and between foreign ministers before each

36 Examples are the Nordic Council, the Baltic Assembly and the Visegrad Group.

37 For an attempt to identify these various periods, see in particular J.W. Brouwer, 'Nederlands-Belgische samenwerking in Benelux en Europa', *Internationale Spectator*, Vol. 57, 2003, pp. 466-471. Important initiatives include the Benelux countries' leading role in drawing up the Treaties of Rome and their joint memorandum for the European Convention (*A balanced institutional framework for an enlarged, more effective and more transparent Union*, 4 December 2002). Brouwer contrasts this with the period 1974-1995, in which relations between the three countries were no different from their relations with other EU member states.

38 See, for example, Luk Van Langenhove and Jan Wouters, *De Vlaamse positie ten aanzien van de Benelux naar aanleiding van de vernieuwing van het Benelux-verdrag*, a report on a study by United Nations University/Comparative Regional Integration Studies (UNU-CRIS) and the Institute of International Law of the Catholic University of Leuven on behalf of the Flemish Department of Foreign Affairs, June 2006, pp. 94-109.

meeting of the General Affairs and External Relations Council (GAERC). These 'Benelux breakfasts' take place almost monthly. Where appropriate, there are also consultations before meetings of EU sectoral councils; the decisions and agendas are usually rather informal and ad hoc. These consultations take place so that the three countries can make their views known to one another and, where possible, coordinate them or draw up joint positions. There is no obligation in this regard. In their current form, these consultations cannot therefore be considered as an exclusive coalition within the EU.

Apart from these regular preliminary consultations, mention should be made of the joint 'Benelux memoranda'. These are not very frequent; however, they have had a significant impact on EU decision-making on more than one occasion in situations calling for a joint position. Recent examples are the memoranda on migration and development, on dealings with Hamas as part of the Palestinian government, on the EU's role regarding the external aspects of energy security and on the EU's enlargement strategy.[39] By acting jointly at an early stage, the Benelux countries were able to get these topics onto the EU agenda and to influence European decision-making. Another important example is the Benelux memorandum on the European Convention and the Treaty establishing a Constitution for Europe, which enabled the Benelux partners, in consultation with other smaller member states, to influence the direction of the decision-making process at certain stages.[40]

These documents were drawn up outside the Benelux organisation as such, chiefly by the three national governments in cooperation with the Permanent Representations to the EU. It is also clear that positions taken by the Benelux countries in joint memoranda are limited in import. In the negotiations on the constitutional treaty, for example, each country followed its own course despite the joint memorandum. This illustrates the non-binding nature of BPC in its current form.

The AIV is pleased to see that in recent years Benelux memoranda have been used more frequently as an instrument of BPC. It believes that this practice should be encouraged, especially since it has enabled the three countries to have a palpable influence on the EU's agenda and decision-making process. Other EU countries − not least the ones that have only recently joined the Union − expect the Benelux countries to play an active role in this regard, and have proved receptive to proposals and ideas put forward in such documents.

The question now is whether the extension of the Benelux treaty provides a suitable opportunity to step up and institutionalise BPC. There are several dimensions to this question. Apart from stepping up and institutionalising regular consultations at EU level, another issue is whether BPC should be specifically addressed in the future Benelux treaty, and whether Benelux institutions − particularly the Secretariat-General − should play a part in initiating, preparing and implementing BPC. In the course of the current debate on the future of the Benelux, a number of proposals, some of them quite far-reaching, have been made on the subject. The most modest confirm the Benelux countries' status as natural partners, reflected in a 'right of first refusal' whereby they promise to consult one another before announcing a position. Others go so far as establishing of a European unit within

39 *Migratie en ontwikkeling* ('Migration and development'), Benelux paper, Brussels, 8 May 2006; *Contacts with the new Palestinian Government*, Benelux non-paper, 2006; *Energy Security and Foreign Policy*, Benelux position paper, 2006; *Draft Benelux position on enlargement*, 12 June 2006.

40 *A balanced institutional framework for an enlarged, more effective and more transparent Union*, 5 December 2002.

the Secretariat-General, or 'soft institutionalisation' of political consultations in the form of regular talks at various civil service and political levels, with the Secretariat-General being actively involved in setting political and other priorities for Benelux cooperation.[41]

The AIV is in favour of closer BPC, which is a logical corollary of the European balance of forces that has been visible in recent years. Close political cooperation between the Benelux countries has added value in Europe today, provided that certain conditions are met. The 1994 report by the Committee of Wise Persons states that, in response to developments in Europe and the global economy, the Benelux countries can best defend their interests 'by adopting, wherever possible, joint or similar positions on the main European and other issues.'[42]

As of 2007, the need for this is all the more pressing. In the AIV's view, it is particularly important to appreciate the impact of enlargement on the ability of individual states to influence the European agenda and decision-making process. Enlargement from 15 to 27 states has introduced a completely new dynamic into EU negotiations, including the formation of coalitions between countries (particularly larger ones).[43] Smaller member states such as the Benelux countries are in a stronger position if they act jointly, especially as the Benelux is very much seen as a unit by the outside world and, partly on the basis of that reputation, can and does exert influence out of proportion to its size. As mentioned above, this applies particularly to the use of Benelux memoranda. The fact that these are used as discussion papers in the EU and that sections of them have been adopted as EU positions is a significant indicator of the influence the three countries can exert within the EU by acting jointly. Another consideration is that the EU nowadays offers more scope for closer cooperation and that there is a greater need for it. The Benelux countries can jointly play a pioneering role by serving as a laboratory for further European integration, as they have done in the past.

The AIV emphasises that joint action at EU level is important not only to current policy matters, but above all to the future of the EU. Despite the recent difficulties over the European Constitution, the fact remains that the three Benelux countries have traditionally been a driving force behind the process of European integration and have always advocated use of the Community method, something the AIV believes is still very necessary.[44]

41 See, for example, the report by the Flemish government mentioned above (Luk Van Langenhove and Jan Wouters, *De Vlaamse positie ten aanzien van de Benelux naar aanleiding van de vernieuwing van het Benelux-verdrag*, a report on a study by United Nations University / Comparative Regional Integration Studies (UNU-CRIS) and the Institute of International Law of the Catholic University of Leuven on behalf of the Flemish Department of Foreign Affairs, June 2006). See also Board of Secretaries-General, *Discussienota over de toekomst van de Benelux*, Brussels, 27 June 2005, and I.G.C. Janssen, *Benelux: closer cooperation within the European Union?*, Shaker Publishing, Maastricht, 2006.

42 Committee of Wise Persons, *De Benelux, opnieuw bezien,* Summary with conclusions and recommendations (undated informal publication by the Benelux Secretariat-General), p. 6.

43 For more on Dutch concerns about the tendency of larger member states to form dominant groups, see in particular Bernard Bot, 'Met overtuiging en berekening: van zuiver naar realistisch multilateralisme', *Internationale Spectator*, vol. 60, 2006, pp. 547-551.

44 See the AIV's Advisory Report No. 52, *Europe: a priority!*, November 2006, and its Advisory Letter No. 10, *The European Union and its relations with Dutch citizens*, December 2005.

In calling for this, the AIV is aware that the Benelux cannot be an *exclusive* partnership. Different coalitions arise within the EU according to the topic involved. This fact of European life, and the reality that the three Benelux countries wish to retain a certain freedom of action and negotiation, are at odds with the notion of a treaty obligation to consult one another and a 'right of first refusal'. The AIV favours a more positive approach whereby the Benelux countries would *give priority* to consulting one another at European level. This should in any case apply to topics that are on the agenda at both EU and Benelux level, such as police cooperation.

The AIV therefore believes that political cooperation at EU level should be stepped up. First of all, joint Benelux input in the process of forming European coalitions will increase the relative influence of the individual partners. The combined weighted votes of the three countries are equal to those of one large EU member state. Secondly, even in cases where agreement cannot be reached, it is useful to know one another's positions and bear them in mind at later stages of the negotiations. In this connection the AIV cannot help feeling that the idea of a joint position is sometimes abandoned too easily in cases where the three partners fail to agree. In such cases an extra effort should be made to reach a consensus, which will otherwise be very difficult to achieve within the EU as a whole. The Benelux countries should therefore make a commitment to seek a coordinated position not only on matters on which they already largely agree, but also on more difficult ones. In the AIV's view this commitment could take the form of a political declaration appended to the future Benelux treaty.

The AIV does not support proposals to give the Benelux Secretariat-General or Board of Secretaries-General a role in the BPC process. Political cooperation is a matter for the national governments and the Permanent Representations to the EU, and mainly concerns issues and fields that do not relate to BEU cooperation. Since the national governments and the Permanent Representations have expertise on EU dossiers and in the broader European arena, primary responsibility for coordinating positions on EU affairs lies with them. Nor does the AIV see any benefit in separate or additional consultations with the Benelux Secretariat-General as part of European coalition-forming or decision-making. Quite apart from the lack of appropriate expertise and staff, such consultations would above all lead to delay and duplication of effort. This is a key consideration at a time when speed and flexibility in reaching decisions are of increasing importance to the EU.

Nevertheless, there are areas in which both the Benelux organisation and the EU are active. The Benelux countries' function as a laboratory in such areas as internal security policy has already been mentioned. One question that arises here is whether Benelux (or Benelux-plus) initiatives can be of service to the process of European integration. Apart from this, the AIV feels that, in areas where the Benelux countries are cooperating more closely than the EU as a whole, they can be expected to adopt − or endeavour to adopt − joint positions on the topics concerned at EU level.

Conclusion

The AIV believes that, even in its currently rather loose form, BPC has added value in the broader EU context. Given the enlargement of the EU, the tendency for groups to form within the Union, the more assertive attitude of the larger member states, the need to form coalitions at an early stage and the growing need for enhanced cooperation, the AIV feels that BPC should be continued and stepped up. Topics for BEU cooperation should definitely also be on the agenda − especially as experience has shown that the Benelux countries can increase their influence on the European decision-making process by acting jointly. In view of this need to step up BPC, a number of recommendations will be made in the final chapter of this report.

V The Benelux institutions

After analysing the Benelux's range of tasks, the AIV has asked what role the Benelux can play as an organisation in carrying them out. In this connection it has made a distinction between the functioning of institutions with mainly advisory, record-keeping or judicial tasks (the Interparliamentary Council, the Court of Justice, the BOIP, the Economic and Social Consultative Council and the College of Arbitrators) and the Benelux's actual consultative structures, which have more policy-related and/or executive tasks. These structures are political (the Committee of Ministers and the Ministerial Working Parties) and administrative (the Council of the Economic Union, the administrative committees and the Benelux Secretariat-General). The AIV's recommendations are contained in Chapter VI.

In the present chapter the AIV wishes to point out that the Benelux has made arrangements to take account of Belgium's new federal structure during Benelux consultations, in the sense that the regions and linguistic communities can in appropriate cases take part in consultations at both ministerial and civil service level, because – unlike, say, the Dutch provinces – they have acquired treaty-making powers. However, as the AIV was told by people it interviewed in Belgium, there is now a risk that the three Benelux countries will no longer speak with a single voice. The AIV therefore considers it vital that the Belgian federal government retain sole sovereign powers as a party to the treaty. This means that the regions and linguistic communities must, through the appropriate channels, arrive at a joint position and a single line of conduct in their negotiations with the other Benelux countries.

The functioning of the Benelux's advisory and judiciary institutions

This section will discuss in turn the Interparliamentary Council, the Court of Justice, the BOIP, the Economic and Social Consultative Council and the College of Arbitrators.

The Benelux Interparliamentary Consultative Council

In the AIV's opinion, the Interparliamentary Council needs to be more aware of its advisory function. It is not a parliamentary body with full parliamentary powers, and never will be. As regards its advisory function, the following points should be borne in mind:

1. Transparency. The Committee of Ministers is required to report on its activities and respond to earlier recommendations by the Council. In cases where its recommendations have not been followed, the Council has insisted that the Committee of Ministers account for this.
2. The politically responsible ministers need to be present for discussions on politically sensitive matters (such as the dredging of the Western Scheldt, the quality of water in the Meuse and the Iron Rhine rail freight link).
3. The Council is a unique forum for meetings between members of parliament from the three countries. This personal contact helps create a consensus on matters that call for a joint solution.
4. The Benelux is seen by the outside world as a model for enhanced cooperation, and the Council has played a pioneering role in this. This role also has implications for the formation of coalitions in the enlarged EU.

The Council has itself indicated that it would like to adopt a more project-based approach to its tasks, but has not worked out the details. Without wishing to encroach on the Council's powers to regulate its own working procedures, the AIV could envisage the Committee of Ministers discussing its annual programme with the Council, in addition to submitting an annual report. Moreover, work could be arranged so that plenary sessions are held on

specific topics and relevant members of the national parliaments are also invited to take part.

The number of Council committees has recently been cut back. The AIV feels that the number of committees and their tasks should be evaluated more often, and proposes that this be done on a regular basis.

The AIV sees little point in granting the Council a formal right of initiative. There is sufficient scope under existing procedures to introduce relevant ideas either in debates or at question time. However, proper reporting to national parliaments and their committees is important. Particularly when cooperation in the broader Benelux-plus context is on the agenda, the AIV recommends that members of parliament from *all* the countries involved be invited to attend.

The Benelux Court of Justice
Since 1974 the Court of Justice has given judgment in 165 cases: 37 cases involving civil servants and 128 preliminary rulings. Information made available to the AIV by the Court shows that a majority of those cases come from Belgium (52%), are submitted by courts (59%) and are dealt with entirely in writing (55%) and in the Dutch language (76%). Many concern trade marks (45%).

Article 16.3 of the Court's Statute stipulates that the statute will remain in force for as long as the BEU Treaty. In 2003 and 2004, at the request of the President of the Court, two preliminary advisory reports were drawn up on the extension of the 1958 BEU Treaty and the possible extension of the Statute.[45] Both reports expressed reservations about a possible increase in the number of areas in which the Court is competent, with the exception of extension to other intellectual property rights, such as patents. The harmonisation of EU trademark law has considerably reduced the Court's tasks,[46] while a European Patent Court is being set up under the European Patent Litigation Agreement, with the Benelux Court potentially serving as a regional court of first instance.[47]

In addition, the two aforementioned preliminary advisory reports and an article by the President of the Benelux Court[48] call for replacing the lengthy current legal procedure for appeals against the registration of trademarks and designs with a direct appeal to the

45 See J. Erauw, H. Vanhees and P. Taelman, *Preadvies over het Benelux Gerechtshof*, Ghent 2004, and D.W.F. Verkade, *Preadvies betreffende enige vragen omtrent de toekomst van het Benelux-Gerechtshof,* 2003.

46 Case C-337/95 Parfums Christian Dior v Evora [1997] ECR 1-6013. In this verdict the Court of Justice of the European Communities determined that the Benelux Court of Justice should be designated as a national supreme court within the meaning of Article 234 of the EC Treaty and that preliminary rulings should be made by the European Court rather than the Benelux Court. See also Directive 2004/48/EC on the enforcement of intellectual property rights (*Official Journal*, L 195/16, 2 June 2004).

47 Given the current problems with the creation of a Community patent, it seems unlikely that one will be forthcoming any time soon. Particularly in view of this, the European Patent Organisation has drawn up a draft statute for the European Patent Court. This would consist of a Court of Appeal and a Court of First Instance, which would in turn have a number of Regional Divisions.

48 Ivan Verougstraete, 'Een toekomst voor het Benelux-Gerechtshof', *Bijblad Industriële Eigendom*, 2005, pp. 87-91.

Court.[49] The objection to the current procedure is not just that it is long, but above all that national courts reach quite different judgments in similar appeal cases. The possibility of appealing directly to the Benelux Court would make for more uniform judicial practice. The throughput time could also be reduced by trying the cases in specially created smaller chambers. This could be modelled on appeals against registration (or refusal of registration) by the European Trademark Office lodged with the European Court of First Instance and subsequent appeals in cassation to the Court of Justice of the European Communities.[50] The AIV is in favour of this opportunity for direct appeal, to be handled by a specially created chamber. The work of the chamber in first instance would then be to establish the facts, which means that it would probably also need a secretariat (or a larger one). In that case, for reasons of efficiency, efforts should be made to ensure that the chamber has no more than three members. Furthermore, the AIV sees no need for recruitment to be limited to the highest courts in the member states; judges of lower courts should also be eligible for appointment. Finally, the AIV would like experts in trademark and design law to be eligible as members of the chamber, in much the same way as alternate judges are appointed in the Netherlands.

Regarding the possible extension of the Benelux Court's powers in the field of intellectual and industrial property rights, there have also been proposals that the Court eventually be made competent to act as a Regional Division of the future European Patent Court. The AIV is in favour of this suggestion. This work could likewise be assigned to a specially created smaller chamber, possibly with specialised judges. Another proposal is to extend the Court's competence to interpret to areas which, on the basis of this advisory report, may be identified as core tasks for Benelux cooperation. Such areas include ones in which the Benelux could serve as a laboratory for developments at EU level, such as police cooperation, migration policy and energy policy. The AIV feels that this deserves serious consideration.

As regards the Court's competence, it has also been proposed that it be granted jurisdiction over disputes not only between Benelux states, but also between them and regional authorities. At present, disputes between Benelux states are supposed to be brought before the College of Arbitrators. This has hardly ever happened, so the College of Arbitrators is effectively dormant. Since this situation seems unlikely to change, there is no reason to assign this task to the Court, which in any case is not equipped to take it on. Moreover, if

49 Objections to the registration of trademarks or designs, or to the refusal of such registration, can now be lodged with the appeal courts in Brussels, The Hague or Luxembourg and appeal in cassation can be lodged with the national supreme court. These judicial bodies can then always apply to the Benelux Court for a preliminary ruling. The Benelux Court could thus function as the court of cassation with respect to judgments of the appeal courts in Brussels, The Hague or Luxembourg, bypassing the national courts of cassation. One drawback is that, if a remedy against a judgment by a court of appeal were to adduce more than just a breach of Benelux legal rules, it is not clear whether the Benelux Court would be competent in relation to the other subject matter. The AIV is not in favour of this proposal. See also I. Verougstraete, 'Een toekomst voor het Benelux-Gerechtshof', *Bijblad Industriële Eigendom*, 2005, pp. 90-91, D.W.F. Verkade, Preadvies betreffende enige vragen omtrent de toekomst van het Benelux-Gerechtshof, 2003, pp. 14-19, J. Erauw et al., *Preadvies over het Benelux Gerechtshof*, Ghent 2004, pp. 18-20 and M.C. Janssens and V. Vanovermeire, *Benelux na 2010*, pp. 85-86.

50 Under this arrangement the Benelux Court would function as a court of cassation, by analogy with the European procedure for appeals against the registration (or refusal of registration) of trademarks or designs. Appeal in cassation would thus continue to be available.

the Court were competent to adjudicate in disputes between its 'founders', the credibility of its judgments in disputes between their legal persons could be undermined.

Disputes between the Benelux states and regional authorities could arise in Belgium, whose new federal system allows regions and linguistic communities to conclude treaties in their own right. However, there are drawbacks in granting 'ordinary' courts jurisdiction over the interpretation of treaties and supranational agreements. In the AIV's opinion, every newly concluded agreement should specify whether the Benelux Court should perform this function.

The Benelux Office for Intellectual Property
Almost a million trademarks and more than 16,000 designs are currently registered with the BOIP.[51] The institution has a staff of just under 100.[52] It is entirely funded by the fees that businesses pay to have their trademarks or designs registered. In 2005 the BOIP made a profit of €5,131,000.[53]

It is generally considered that the BOIP works well and responds quickly to new challenges. For example, trademarks and designs can be registered electronically and applications are processed quickly. The creation of the European Community trademark following the entry into force of Regulation 40/94[54] and the resulting establishment of the European trademark and design office in Alicante (in 1996) have so far not led to a spectacular fall in the number of trademarks registered with the BOIP.[55] However, with the entry into force of Regulation 6/2002/EC on Community designs[56] on 1 April 2003, since there is no major difference between the costs of registration for a European design and a Benelux one, the situation regarding the registration of designs should be different.[57]

Especially as the Benelux Convention on Intellectual Property has only recently entered into force (1 September 2006), there seems no reason to propose substantial changes in the work of this Benelux organisation.

51 Source: BOIP website <http://www/boip.int>.

52 By contrast, the Benelux Secretariat-General has a staff of sixty.

53 This profit was exceptionally high because the domain name '.eu' was introduced that year.

54 *Official Journa*l L 011, 14 January 1994, p. 1.

55 Statistics published on the BOIP website indicate that the number of trademarks and designs registered since 1997 has remained more or less stable at 23,000, with a peak of 30,685 in 2005.

56 *Official Journa* L 3, 5 January 2002, p. 1.

57 The number of registered Benelux designs fell from 2,013 in 2004 to 1,238 in 2005. In the case of trademarks that mainly operate at local or regional level, however, it is often no advantage to be registered with the European Trademark Office, since the trademark must then apply throughout the EU. For example, if a trademark comes under attack in Estonia, it must also be defended there, otherwise its registration will lapse, including its registration in the Benelux countries. This explains the increase in the number of Benelux registrations in 2006.

The Economic and Social Consultative Council and the College of Arbitrators
The first of these two bodies has served no practical purpose for many years now, and in the AIV's view it can be abolished. The College of Arbitrators has likewise had almost nothing to do, for the simple reason that no disputes between Benelux states have ever been brought before it. However, the possibility that it will one day have to deal with such a dispute cannot be ruled out. The AIV feels this possibility should be kept open by maintaining this dormant institution as it is, especially since the costs of running it are negligible.[58]

Benelux consultative structures and the role of the Secretariat-General
The current institutional consultative structures can be summed up as follows:

The Committee of Ministers, the Ministerial Working Parties and the Committees
The Committee of Ministers is the highest decision-making body in the BEU. It is made up of the heads of government of Belgium (the federal government), the Netherlands and Luxembourg. The delegations are chaired by the foreign ministers, and the ministers of economic affairs and finance are also formally part of them. Other members of the three governments or of Belgium's regional or community governments can take part in meetings of the Committee of Ministers, depending on the agenda.

There are no requirements on how often the Committee of Ministers meets. It has not met formally since 1982. The AIV feels this is symptomatic of the lack of political leadership the Benelux has received from its member states in the second half of its fifty-year existence. One of the AIV's recommendations in Chapter VI is that the frequency of these meetings be stepped up.

The BEU Treaty makes provision for consultations by specialised Ministerial Working Parties. These have been set up in areas such as traffic, spatial planning and the movement of persons.

The committees, special committees and working parties are made up of officials from the various ministries (including those of Belgium's regions and linguistic communities) according to the ministries' areas of competence.[59] Most of them have a number of subcommittees and subgroups.

The Council of the Economic Union and the civil service committees
The Council of the Economic Union is the highest official body of the Benelux. It is made up of the chairs of the national delegations to the committees. The Council is chaired by senior officials from the three countries' foreign ministries (in the case of the Netherlands and Belgium, the secretaries-general). Its main tasks are (1) to carry out decisions by the Committee of Ministers and (2) to prepare dossiers for the Committee of Ministers. It thus performs a coordinating, intermediate role between the Committee of Ministers and the other committees.

In the earlier review it was decided that the Council should supervise the implementation of guidelines set out by the Committee of Ministers and submit reports to it, based on quarterly reports by the Secretary-General on the progress and results of Benelux activities.

58 See also the previous section on the Benelux Court of Justice.

59 See Annexe VI.

The Council thus has a key part to play in providing leadership, coordination and monitoring.

Despite this central guiding role, the AIV notes that the Council only holds skeleton meetings once every two or three years. The AIV does not consider this adequate to ensure proper leadership and monitoring. It also notes that the Council's membership is not in keeping with the Benelux's current and potential role and range of tasks, particularly in view of the organisation's function as a laboratory and its links with the EU (joint action in EU decision-making bodies). The AIV therefore proposes that the Council's membership be altered to take account of the new range of tasks by appointing the national directors-general for European cooperation to it rather than the secretaries-general of the ministries involved. The Council should also meet more frequently. This will put it in a better position to provide both a political and a practical link between the BEU and the EU.

The Council of the Economic Union is assisted by a coordinating committee which monitors the day-to-day activities of the Benelux, in close cooperation with the Secretariat-General. This advisory committee consists of foreign ministry officials responsible for Benelux cooperation at national level (known as national coordinators). However, the BEU Treaty makes no provision for such a committee. The AIV believes it should be given proper institutional status.

There are currently some 90 active consultative bodies − councils, departmental committees, committees, special committees, subcommittees, working parties, subgroups and so on − within the Benelux structure. Only some of these were officially set up by the 1958 Benelux treaty. Others are the product of later developments. New consultative bodies have regularly been created as new tasks arose. Some of these were granted formal status by ministerial orders, but others were set up without ever acquiring such status. In addition to the committees and working parties that are still operating, a number of consultative bodies that have in practice ceased to do so still exist on paper. In the AIV's view the entire array of consultative bodies should be critically assessed in the light of the core tasks set out in Chapter III.

The Board of Secretaries-General and the Secretariat-General
The Secretariat-General is the administrative hub of BEU cooperation, and is supervised by the Board of Secretaries-General. The latter consists of a Secretary-General and two Deputy Secretaries-General, chosen so that all three countries are represented. The AIV would like the Board to have a higher profile. In this connection the Secretary-General should make more frequent use of his/her right of initiative and take a lead in drawing up an annual work programme. To facilitate this, the Secretary-General's political profile should be raised in line with the proposed strengthening of his/her position. The AIV would also like the Secretary-General's term of office to be limited to five years, with the possibility of one reappointment. The division of tasks between the three members of the Board should also be clarified.

The Secretariat-General assists Benelux consultative bodies on administrative and policy matters and provides them with substantive, administrative and logistical support. In practice, its role varies according to the area of work. In some cases it supervises the administrative process and provides facilities for meetings (drawing up agendas, taking minutes, inviting relevant experts, forwarding papers, arranging for interpreters, etc.). This task also includes monitoring progress on items requiring action and drafting legal and other texts. The Secretariat-General also acts as an independent intermediary between stakeholders in the three countries. In other cases, it mainly acts as a centre of expertise,

especially when it comes to cross-border cooperation on, for example, major spatial planning projects. Differences in consultative arrangements, legislation and administrative practice need to be overcome in such cases. The Secretariat-General also acts as the collective memory of Benelux cooperation.

The Secretariat-General thus plays several different roles: facilitator, secretariat, process manager, etc. This raises the question of whether it should continue to do so in the future, or instead become a lean, flexible project organisation that provides facilities for cooperation in specific areas. The findings of the forthcoming interministerial study on the Secretariat-General as an organisation and of the study by the Public Administration Council mentioned above will be important in making this decision. (Neither study was available at the time of writing.)

Conclusions

The government has stated that if favours continued Benelux cooperation. In the preceding chapters, the AIV has endorsed the view that BEU cooperation and BPC have added value. However, greater political commitment and leadership from the Benelux states will be required, and the Benelux institutions will need to be adapted.

The AIV believes that the informal changes introduced in 1995-1996 have made for leaner, more flexible consultative arrangements. These must now be adapted again in the light of present circumstances and the core tasks listed above. These changes need to be made in such a way that the treaty does not have to be amended whenever a new core task arises or an old one is phased out.

In the AIV's opinion, the extension of the Benelux treaty provides a perfect opportunity to slim down the existing complex network of consultative bodies into a more flexible structure that can respond to future changes in the organisation's mission. The core tasks and priorities listed above should be the standard by which this structure is assessed.

VI The future of the Benelux: conclusions and recommendations

In the request for advice, the AIV was asked to give an opinion on the benefits of Benelux cooperation at both practical (BEU) and political (BPC) level. The AIV feels that Benelux cooperation clearly has added value in both areas. As already indicated in the introduction to this report, the AIV is therefore in favour of continued Benelux cooperation and supports the government's decision to extend it. It notes that in the outside world the Benelux is recognised both as a role model and as a politically influential body. All this would be lost if the treaty were not renewed.[60]

The AIV believes that the added value of the Benelux is mainly to be found in the broader context of European cooperation. The primary – though not the only – aspect of this is Benelux political cooperation. Experience has shown that the three countries can exert influence out of proportion to their size on European decisions and the European agenda, thus strengthening their position within the EU, by coordinating their positions and taking joint initiatives. They have benefited from the fact that, partly owing to their reputation as pioneers and founders of European integration and their history of close cooperation under the BEU Treaty, the outside world sees the Benelux countries as a natural grouping – often more than people in the Benelux countries themselves do, in fact. The Benelux is in practice the only regional partnership within the EU that is considered effective. This is an exceptional position, which was formally acknowledged from the very beginning of the European integration process in the enabling clause. It also means that political cooperation at EU level cannot be seen in isolation from BEU cooperation, which in the AIV's view clearly serves as a platform for political cooperation.

The AIV therefore concludes that BPC, even in its currently rather loose form, has added value in the broader context of the EU. As for its future – and specifically the question of whether it needs to be stepped up – the AIV believes it should mainly be seen in the broader context of the European balance of forces. In this connection, the AIV puts forward the following considerations about the continuation and possible enhancement of BPC:

1. EU enlargement has inevitably weakened the position of the individual member states. Closer trilateral cooperation and coordination within an expanding Union may help compensate for this. An additional factor here is the increasing need to form coalitions at an early stage of EU decision-making. The three countries can use the tried-and-tested Benelux partnership to gain an advantage in this always complex process.
2. The AIV also points to the now more openly manifested cooperation between the larger countries. This development as well is forcing the smaller and medium-sized countries to cooperate more actively to defend their interests. As part of this process, closer cooperation between the Benelux countries is a logical step, including when dealing with the other smaller member states.
3. Finally, in a Union of 27 or more countries, enhanced cooperation is becoming inevitable. The Benelux can play a pioneering role here, as it has in the past.

In acknowledging the added value of BPC, the AIV is aware that the course of political cooperation between the Benelux countries has not always run smooth in recent years.

60 For more on this, see I.G.C. Janssen, *Benelux: closer cooperation within the European Union?*, Shaker Publishing, Maastricht, 2006.

Indeed, centripetal tendencies seem to have increased in some areas.[61] Nevertheless, the AIV believes that greater commitment to political cooperation in response to the shifts in the European balance of forces can improve the position of the three Benelux countries.

The AIV's favourable assessment of Benelux cooperation also applies to the BEU. This aspect of cooperation has clearly evolved, with a shift in emphasis towards internal security and cooperation on cross-border issues. The AIV believes the BEU has a valuable role to play in these areas. This is particularly true of the Secretariat-General, which plays a key initiating, supporting and in some cases guiding role here. Especially in the field of cross-border cooperation, it acts as a centre of expertise. In the AIV's view, these activities should therefore be continued and streamlined, although due account should be taken of the findings of the report by the Public Administration Council (due in late 2007) on obstacles to cross-border cooperation between local authorities and the role of the Secretariat-General in this area.

The AIV also wishes to emphasise the BEU's potential role as a pioneer in cooperation in a broader EU context. In the past, BEU cooperation has served as a laboratory not only for economic cooperation, but also for the Schengen and Senningen agreements. The Benelux-plus arrangements link this function directly to the concept of enhanced cooperation, and the enabling clause in the EC Treaty also provides a justification for it. By taking initiatives in priority areas for BEU cooperation, the Benelux countries can continue in the future to give a major impetus to enhanced cooperation within the EU. The fact that the Benelux countries border on Germany and France means that they can generate considerable political influence in the broader European context, especially through Benelux-plus cooperation. Apart from this function for the EU, Benelux cooperation can also be of practical use in implementing EU legislation.

The AIV therefore concludes that Benelux cooperation has both political and practical added value – added value that should also be viewed in the light of developments at EU level.

Criticisms

At the same time, the AIV is critical of the way in which the BEU and BPC currently operate. It therefore believes that not only the BEU and its institutions, but also current BPC practice, must be adapted and streamlined to enjoy the added value of the Benelux in the future.

The AIV's main criticisms, which have been voiced in earlier chapters, are as follows:

1. BEU cooperation has no clear mission or strategy, and as a result the current range of tasks lacks focus and coherence. This situation has arisen from the process of adaptation that the BEU has undergone following the emergence and development of the EU. Particularly on economic issues, the organisation has been largely overtaken by the EU. Although the current range of tasks is evidence of the BEU's adaptability, it is still mainly the outcome of disconnected ad hoc decisions. It is by no means always clear why these tasks should be carried out by the BEU, whether the organisation has the necessary powers and capabilities or whether there are alternatives to BEU cooperation. Together with the proliferation of consultative bodies and the fact that some of the bodies established by the treaty are no longer operating (or only partially), the overall picture is that of an organisation with too little direction and vision.

61 Examples include Iraq, the European Security and Defence Policy and views on the future of Europe and the constitutional treaty.

2. BEU cooperation is not visible enough in the Benelux states. This is particularly regrettable at a time when the BEU is increasingly focusing on areas of direct relevance to the public and politicians. The Board of Secretaries-General and the Secretariat-General have an important part to play here. In the AIV's view, BEU activities will become more visible if the Board of Secretaries-General has a higher political and public profile, which it can achieve in particular by taking a more active attitude towards the Benelux states. In this connection, the AIV also points to the role of the Interparliamentary Council and national parliaments.
3. As regards BPC, the AIV feels that insufficient use is being made of its potential. Political cooperation is in practice rather unstructured and too dependent on contingencies and personal connections. In day-to-day practice there is in any case no indication that the Benelux partners consult one another on a priority basis. Given the broader European balance of forces, the AIV is therefore in favour of closer, more systematic political cooperation
4. Both the BEU and BPC suffer from a lack of political and official leadership. In the case of the BEU, this is reflected in the fact that the competent political and official bodies meet very irregularly, with the result that their agendas and work programmes are reactive and ad hoc. Another factor is the rather cautious stance of the Board of Secretaries-General.

The AIV makes the following recommendations regarding the continuation of the BEU and BPC:

On the range of tasks for BEU cooperation

- Step up BEU cooperation, and mention internal security, spatial planning and the market as core tasks in a political declaration appended to the future treaty (but not in the treaty itself).
- Do not confine BEU cooperation to the three Benelux partner countries, but leave room for bilateral or cooperative projects that only cover certain areas of the Benelux.
- Make greater use of BEU cooperation as a laboratory for further European integration, and leave room for cooperation in which countries or regions bordering on the Benelux can also participate (Benelux-plus).[62]
- Where possible, increase BEU cooperation with other regional groupings of countries, such as the Nordic Council, the Baltic Assembly and the Visegrad Group, especially in preparing enhanced cooperation within the EU.
- Invest in making the organisation more visible by pursuing an effective publicity policy in support of specific projects that appeal to people's imagination.

On BPC

- Although the AIV is not in favour of making specific reference to BPC in the new treaty, it does believe that the extension of the treaty should be used to emphasise the significance of BPC in a political declaration. This should mention the special solidarity that exists between the three countries as a result of their common history and close ties. It should also indicate that the three countries see each other as natural partners in the broader EU context and the international community, and that they will endeavour to coordinate their positions and actions as much as possible. Such a text will not only emphasise the Benelux states' political commitment to BPC − which the AIV considers desirable − but will also confirm to the outside world its enduring importance.

62 The AIV is aware that in certain cases there is more extensive cooperation between the Netherlands and Germany than within the Benelux. Border checks in the Meuse-Rhine Euregio are a case in point.

- Step up BPC at both political and civil service level. Continue regular consultations between the prime ministers and foreign ministers as well as the ministers responsible for EU affairs, and prepare these well by drawing up clear, timely agendas. This means that there must be more regular consultations between the Permanent Representations to the EU and, depending on the topic, the Directorates-General (DGs) and policy departments. A standard question here should be what scope there is for coordinated positions (the priority consultation mentioned above). Line ministries should be involved wherever necessary, particularly in areas in which BEU cooperation has been or is being developed. In this connection it seems self-evident to the AIV that the Benelux countries should consult each other in cases where cooperation goes further than at EU level.
- Responsibility for coordination should lie with the Permanent Representation to the EU and the Ministry of Foreign Affairs, as is already the case with BEU cooperation. Examine whether the existing ministerial and interministerial coordination structure needs strengthening.
- Make more extensive use of Benelux memoranda as a means of strategic agenda-setting and influencing EU decision-making. Systematically pose the question of whether use of this instrument is appropriate. This should be part of regular consultations, particularly in the run-up to major European policy developments such as treaty amendments or enlargements.
- Increase the Benelux states' knowledge of one other's positions and policies through more regular exchange of officials between the Permanent Representations to the EU and the relevant ministries, especially the Ministry of Foreign Affairs. (Such secondment is distinct from the secondment of national officials to the Secretariat-General, which the AIV has called for to help make it more flexible.)
- Do not give the Secretariat-General a role of its own in BPC, but raise the question in the Secretariat-General's annual work programme of whether the Benelux can play a pioneering role as referred to in Article 306 of the EC Treaty in specific policy areas.
- Also step up BPC with a view to cooperation outside the EU framework. Increase cooperation within other international bodies, involving bilateral missions and consulates where necessary. Examine whether joint consulates and other forms of cooperation between bilateral missions are a possibility, for example when it comes to accommodation.

On the role of the institutions

- Simplify the Benelux's institutional structure, above all by abolishing institutions and bodies that no longer serve any purpose or are no longer operating.
- Make the Benelux more flexible by turning it into a more project-oriented organisation which can also obtain expertise from outside, for example by having national officials seconded to the Secretariat-General. Do not specify a list of tasks in the future treaty, but identify core tasks in a political declaration and indicate priority areas of work in an annexe. The same can be done with the committees and working parties.
- Grant the Committee of Ministers powers to make changes to the administrative consultative structure in accordance with the agreed range of tasks, and regularly evaluate the range of tasks and the consultative structure.

The Committee of Ministers

- Ensure political commitment and strategic guidance for Benelux cooperation on the part of the three Benelux states through a greater role for the Committee of Ministers. Ensure more frequent, regular consultations between the foreign ministers, who bear primary responsibility for Benelux cooperation. One purpose of these consultations should be to arrive at a common view of the Benelux as a practical and political partnership. There should also be a clear political and official commitment, reflected in clear, substantive leadership.

- Enhance the continuity of Benelux cooperation by adapting the chairing arrangements for the Committee of Ministers and the bodies responsible to it as follows:
  – fill the chair for a period of one calendar year;
  – have the chair draw up an annual work programme in consultation with the Secretary-General;
  – submit this to the Committee of Ministers for approval;
  – evaluate its implementation with reference to the annual report drawn up in cooperation with the Secretary-General;
  – discuss the work programme and the annual report in the Interparliamentary Council.

  This means that the BEU Committee of Ministers must meet twice a year to make decisions on tasks and consultative structures.
- Grant the Committee of Ministers express powers to adapt the Benelux's core tasks (to be set out in the political declaration) where necessary. Also grant it powers to adapt the priority areas for work (to be set out in an annexe to the political declaration) that specify these tasks in more detail.

The Ministerial Committees
- Arrange for the Ministerial Committees to be made up of representatives of the governments of the Benelux states, including Belgium's regions and linguistic communities. The Ministerial Committees should report to the Committee of Ministers and operate within the priorities set out in the work programme.

The Council of the Economic Union
- Allow the Council of the Economic Union to play a major guiding and coordinating role in preparing meetings of the Committee of Ministers.
- To create the desired links between BPC and the BEU, arrange for the Council to be made up of Directors-General for European cooperation, rather than Secretaries-General as at present.
- Use the Coordinating Committee (consisting of the national Benelux coordinators) to support the Council, and strengthen the Committee where necessary.

The Administrative Committees and the Working Parties
- Replace the existing complex structure of administrative committees, special committees and working parties with a smaller number of committees. Existing relevant consultative bodies can be given a place within this new structure. (See also the section on the Committee of Ministers, which must be granted powers to set up and abolish committees and working parties in line with the stated core tasks and the annual work programme.)

The Secretary-General
- Limit the Secretary-General's appointment to a maximum of two five-year terms.
- Raise the Secretary-General's profile in keeping with the recommendation to strengthen his/her position. The Secretary-General should use his/her right of initiative more often, and should draw up an annual work programme in consultation with the chair of the Committee of Ministers, to be adopted by the Committee of Ministers. The Secretary-General should implement the work programme and report on it annually.
- The division of tasks between the Secretary-General and the two Deputy Secretaries-General (regarding the topics identified in the work programme) should be mutually agreed on the basis of expertise.

The Benelux Interparliamentary Consultative Council

- Maintain the Interparliamentary Council's advisory task, which should focus on drawing up and implementing the Secretariat-General's work programme.
- Hold plenary meetings of the Council on specific topics based on the work programme, and ensure systematic feedback to the national parliaments of the three Benelux states.
- Where necessary, set up committees and working parties for limited periods to carry out the work programme.
- Increase transparency. The Committee of Ministers is required to report on activities and respond to earlier Council recommendations.
- Discuss politically sensitive issues in the presence of the politically responsible ministers.
- Enhance the Council's function as a forum by involving relevant national spokespersons in discussions on specific topics (where appropriate including ones from other countries in the case of Benelux-plus).
- Regularly evaluate the number of committees and prevent their proliferation.

The Benelux Office for Intellectual Property

- Especially as the Benelux Convention on Intellectual Property has only recently (1 September 2006) entered into force, there seems no reason to propose substantial changes in the work of this Benelux organisation.

The Benelux Court of Justice

- Limit the number of areas in which the Court of Justice has to make preliminary rulings, for example by critically assessing the various Benelux provisions on which the Court is competent. This should also apply to new agreements.
- Be circumspect in conferring competence in Court on disputes between the Benelux states and other regional authorities (such as those created by the federalisation of Belgium).
- Make the Benelux Court the court of appeal against decisions by the Director-General of the BOIP to register trademarks or designs. Such cases can be heard in smaller chambers with fewer judges to reduce the length of the procedure.
- Do not make the Court the court of cassation in respect of decisions by national courts of appeal.
- Allow the Court to retain its present task in respect of disputes involving Benelux civil servants, with the proviso that appeal is only possible at one further instance.

The Economic and Social Consultative Council and the College of Arbitrators

- Abolish the dormant Economic and Social Consultative Council.
- Keep the College of Arbitrators in existence, so that there is a body where the Benelux states can lodge any disputes that may arise between them in the future.

On the Benelux's international legal status

Raise the issue of the Benelux's international legal status in the negotiations on the new Benelux treaty. This should include the question of whether the Benelux Secretariat-General can be granted the status of an international institution and whether the Board of Secretaries-General can be granted diplomatic status. One purpose of this measure, which has implications for salaries and pensions, is to ensure a more balanced distribution of staff among the three countries and to make the organisation more flexible. In the interests of comparability between the Benelux organisations, the BOIP's Privileges and Immunities Protocol could be used as a model.[63]

63 This protocol is annexed to an amendment to the Benelux Convention on Intellectual Property, which entered into force on 1 February 2007

On names

- The future treaty should simply be called the Benelux Treaty and, by analogy with the EU, the institutions should be known as the Benelux Parliament, the Benelux Council and so forth. In this connection, subsidiary legislation should remain in force, as should Article 306 of the EC Treaty.

On the legal design of the future treaty

- There are four legal options when the current treaty expires:
  – it can lapse (in accordance with Article 99 of the BEU Treaty);
  – it can be tacitly extended (in accordance with Article 99 of the BEU Treaty);
  – it can be adapted/supplemented;
  – a completely new treaty can be drawn up.
- Although the three countries have spoken in favour of extending the treaty, the decision to adapt the existing treaty to the Benelux's new activities and consultative structures and to Belgium's new governmental structure rules out tacit extension. Drawing up a completely new treaty to replace the existing one would take by far the most time. Furthermore, this is a path that is by no means free of legal pitfalls, as rescinding certain articles of the existing treaty could have unexpected legal implications for subsidiary law (protocols and/or ministerial orders based on specific articles of the treaty).
- The AIV is therefore in favour of adapting/supplementing the existing treaty by means of an amendment protocol, in combination with a political declaration, in order to make the proposed changes to the treaty.

Annexe I

Mr F. Korthals Altes
Chairman of the Advisory Council
on International Affairs
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Western and Central Europe Department
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Date 10 October 2006
Our ref. DWM-805/06
Page 1/3
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Re Request for advice on Benelux
Cc

Dear Mr Korthals Altes,

The founding treaty of the Benelux Economic Union (BEU) comes up for renewal for the first time in 2010. The government has decided to extend this partnership in view of its practical added value and because it provides a basis for political cooperation (BPC). Negotiations on a new treaty with Belgium and Luxemburg are likely to begin in spring 2007.

To identify the most effective form of future cooperation among the Benelux countries, the government requests the AIV to investigate what tasks will be suitable for Benelux in future and what sort of organisational support is most appropriate. Benelux's added value will also be evaluated in Belgium, specifically in Flanders.

Because the government attaches importance to cooperation in the Benelux context, it would like the Council to draw up an advisory report on this matter. The report should focus on what added value Benelux can provide, within the BEU and BPC frameworks, in the current European playing field. Once the AIV has determined the partnership's added value, it can consider the support to be given by BEU institutions like the General Secretariat, the Benelux Parliament and the Court of Justice.

In order to gain insight into the added value of the Benelux partnership for the Netherlands, I would like to put the following questions to the advisory council:

1. Benelux countries work together on both practical (BEU) and political (BPC) grounds. What, in the AIV's opinion, is the added value of the Benelux partnership in each of these areas?
2. Which fields of activity and subjects would lend themselves to prioritisation in the Benelux partnership?
3. What changes would the Benelux Economic Union, as an organisation, need to undergo to be able to function effectively once substantive prioritisation has taken place?
4. What role does the AIV see Benelux organisations such as the Benelux Interparliamentary Consultative Council and the Benelux Court of Justice fulfilling?
5. Based on its response to questions 1 to 4, can the AIV advise on the most suitable international framework within which to continue the Benelux partnership?

As research is already being conducted into the areas they cover, brief answers to questions 2, 3 and 5 will suffice. However, I would welcome more detail in your answers to questions 1 to 4.

The first term of the Benelux treaty expires in 2010. Given that national ratification procedures may need to take place before changes can be implemented, negotiations will need to be completed by the end of 2007. Negotiations with member states are expected to begin in spring of the same year. I would therefore appreciate your advice by 1 February 2007.

A copy of this letter will be forwarded to the President of the House of Representatives and the President of the Senate.

Yours sincerely,

Bernard Bot
Minister of Foreign Affairs

List of persons consulted

Mr W.J.M. Davids	President of the Dutch Supreme Court
Mr T.R. Doesburg	Member of the Dutch Senate (Labour Party) with responsibility for European affairs and the Benelux
Mr D.J. Eppink	Member of the Cabinet of the Vice-President of the European Commission
Professor C. Gielen	Partner, NautaDutilh, Amsterdam and Professor of Intellectual Property Law, University of Groningen
Mr J. Graff	Ambassador of Luxembourg in The Hague
Mr B.M.J. Hennekam	Benelux Secretary-General
Professor B.J.S. Hoetjes	Special Professor in Administration of Regions – Comparative and International Perspectives, University of Maastricht and The Hague University
Mr H. Hovens	Royal Military and Border Police and Netherlands Defence Academy
Mr C. Janssen	Legal Affairs Department of the Benelux Office for Intellectual Property
Ms I.G.C. Janssen	Consultant, Cabinet Stewart European Affairs
Mr M. Lebrun	Member of the Walloon Parliament
Mr F.J.F.M. de Nerée tot Babberich	Chair, Benelux Interparliamentary Consultative Council and Member of the Dutch House of Representatives (Christian Democratic Alliance)
Mr M.E.C. van der Plas	Head, Legal and Institutional Affairs Section, Dutch Permanent Representation to the European Union
Mr P. Reijnders	Counsellor on Police and Judicial Cooperation, Dutch Embassy, Brussels
Mr W. van de Rijt	Principal Administrator, General Secretariat of the Council of the European Union, DG for Justice and Home Affairs
Dr H.O.C.R. Ruding	Chairman of the Board of Directors, Centre for European Policy Studies, Brussels and former Dutch Minister of Finance
Ms M. Schommer	Ambassador, Permanent Representation of Luxembourg to the European Union
Baron P. de Schoutheete de Tervarent	Director, European Affairs Programme, Royal Institute for International Relations and former Belgian Ambassador to the EU
Mr E.L. Simon	Director-General, Benelux Office for Intellectual Property
Ms C. van Steijn	Head, Aliens Legislation Policy Section, Royal Military and Border Police
Mr L. Strikwerda	Advocate General at the Dutch Supreme Court and the Benelux Court of Justice
Mr M. Vidal	Researcher, Institute for International Law, Catholic University of Leuven, and co-author of the Flemish government's evaluation of the Benelux
Dr de Vries	University lecturer in planning, University of Amsterdam and National Spatial Planning Agency
Professor J. Wouters	Professor of International Law and the Law of International Organisations, Catholic University of Leuven, and co-author of the Flemish government's evaluation of the Benelux

List of abbreviations

AIV	Advisory Council on International Affairs
Benelux	Partnership between Belgium, the Netherlands and Luxembourg
Benelux-plus	Partnership between the Benelux countries and other countries
BEU	Benelux Economic Union
BLEU	Belgo-Luxembourg Economic Union
BOIP	Benelux Office for Intellectual Property
BPC	Benelux political cooperation
CEI	European Integration Committee (of the AIV)
DATF	Deployable Air Task Force
DG	Directorate-General
DWM/WE	Western Europe Division, Western and Central Europe Department, Ministry of Foreign Affairs
EC	European Community
EU	European Union
GAERC	General Affairs and External Relations Council
JHA	Justice and Home Affairs
UN	United Nations
VAT	Value-added tax

Historical overview

1830 Division of the Kingdom of the Netherlands into the Kingdom of Belgium and the Kingdom of the Netherlands

1839 Independence of the Grand Duchy of Luxembourg (Luxembourg remained linked to the Kingdom of the Netherlands until 1890 by the personal union of the King / Grand Duke)

1890 End of the personal union between the Grand Duchy of Luxembourg and the Kingdom of the Netherlands

1921 Establishment of the Belgo-Luxembourg Economic Union (BLEU)

1930 Oslo Convention between Belgium, the Netherlands, Luxembourg and the Scandinavian countries on freezing tariffs

1932 Ouchy Convention between Belgium, Netherlands and Luxembourg on reduced tariffs

1944 Free trade agreement between Belgium, the Netherlands and Luxembourg, signed in London by the three governments in exile on 5 September (the customs union)

1958 Treaty establishing the Benelux Economic Union (incorporating the 1944 free trade agreement). The treaty entered into force in 1960.

Annexe V List of Benelux legislation

(source: www.benelux.be/nl/rgm/rgm_lst_overeenkomsten.asp)

Declaration of intent (2006)	on Benelux liaison officers
Memorandum of understanding of 1 June 2006 on disasters	on cooperation in managing crises with potential cross-border implications
Implementation agreement of 1 June 2006	in pursuance of Article 26, paragraph 3 of the Convention on Cross-Border Police Intervention
Convention of 25 February 2005	on intellectual property
Treaty of 8 June 2004	between the Kingdom of Belgium, the Kingdom of the Netherlands and the Grand Duchy of Luxembourg on cross-border police intervention
Declaration of intent of 29 April 2004	on cooperation between Benelux liaison officers
Agreement of 26 September 2003	on youth
Convention of 20 June 2002	on designs
Convention of 11 December 2001	on trademarks
Convention of 24 June 1996	between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands to implement the European Convention of 14 December 1972 on social security and its annexe, as well as an administrative decision to implement the European Convention on social security
Memorandum of understanding of 4 June 1996	on cooperation in the field of police, justice and immigration between the Ministers of Justice of Belgium, the Netherlands and Luxembourg, the Ministers of the Interior of Belgium and the Netherlands and the Minister of the Force Publique of Luxembourg
Convention of 12 September 1986	on cross-border cooperation between territorial partnerships or authorities, plus the Protocol of 22 September 1998 to supplement the Benelux Convention of 12 September 1986 (on cross-border cooperation between territorial partnerships or authorities)
Convention of 8 June 1982	on nature conservation and landscape protection
Convention of 26 November 1973	on penalty clauses
Convention of 26 November 1973	on commercial agency
Convention of 26 November 1973	establishing a uniform act on monetary penalties
Agreement of 29 December 1972	on commorientes
Protocol of 16 March 1971	to amend the Benelux Convention on metrology

Agreement of 9 December 1970	on arms and ammunition
Convention of 10 June 1970	concerning hunting and the protection of birds, as amended by the Protocol of 20 June 1977
Convention of 11 March 1970	on metrology
Convention of 11 March 1970	establishing a uniform law on dangerous machines
Convention of 3 July 1969	establishing a uniform act on private international law
Convention of 29 April 1969	concerning administrative and judicial cooperation on regulations pertaining to the realisation of the aims of the Benelux Economic Union and three additional protocols
Convention of 26 September 1968	on the enforcement of criminal judgments
Convention of 25 October 1966	on designs or models
Convention of 24 May 1966	on compulsory third-party liability insurance for motor vehicles
Treaty of 27 June 1962	concerning extradition and mutual assistance in criminal matters, plus the Protocol on civil liability of officials acting on the territory of another party and the Protocol of 11 May 1974 to supplement and amend the Convention on extradition and mutual assistance in criminal matters
Convention of 19 March 1962	on trademarks
Convention of 16 March 1961	concerning cooperation in the regulation of imports, exports and transit traffic
Convention of 11 April 1960	on the transfer of the control of persons to the external frontiers of Benelux territory, plus the Protocol of 18 August 1982 to amend the Convention of 11 April 1960

List of currently active Secretariat-General working parties

- Committee on traffic
- Special Committee on the movement of persons
- Special Committee on environmental planning
- Special Committee on environment, nature conservation and landscape protection
- Special Committee on quality certifications for building products
- Special Committee on cross-border cooperation
- Special Committee 'Grenspark De Zoom-Kalmthoutse Heide'
- Internal Market Steering Committee
    - Internal Market Working Party
    - Subgroups on intellectual property, energy, standardisation, public contracts, regional economic policy, trade policy, the self-employed
- Senningen consultations: Working Parties on police, disaster relief, justice, drug policy, etc.
- Working Party on public health
- Working Party on hormones
- Working Party on social security for cross-border workers
- Working Party on youth policy

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