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On behalf of the government, we would like to express our appreciation for the report issued by the Advisory Council on International Affairs (AIV) on 28 August 2003 on the result of the Convention on the Future of Europe, as presented to the Italian President by the President of the Convention, Valéry Giscard d'Estaing, on 18 July 2003. The report is a welcome contribution to the debate on the future of Europe, a debate which has been conducted within the framework of the Convention for over 16 months. This debate will be continued in the Intergovernmental Conference (IGC), which marked its official opening with a meeting of heads of state and government in Rome on 4 October 2003.

This is the AIV's third report on the Convention. The two earlier reports were released in May 2002 and April 2003. The government responded to them by letter of 19 July 2003.

In the 'State of the European Union 2004', which was presented to parliament on 16 September 2003 (the State Opening of Parliament), the government offered its perspective on the results of the Convention. The following response to the AIV report refers to this document a number of times. Along with the 'State of the Union' the government submitted a separate policy memorandum to parliament on the Dutch contribution to the IGC (ref. DIE-518/03). This response also makes reference to that document.

General points

The Convention has produced a draft constitutional treaty for the European Union. The government is pleased that the AIV has, by and large, a positive view of the treaty. The government shares this general opinion about the work of the Convention: it has many good elements – for the Union as a whole and for the Netherlands in particular. In the government's view, several aspects of the Convention's working methods should be singled out for praise, especially its public character (public debates and documents), the broad range of participants (government representatives; parliamentary representatives from old and new member states as well as candidate countries; and representatives of European civil society groups and institutions) and the scope of the discussion (attention given to both short-term and long-term issues).

The government agrees with the AIV that the draft treaty expands the EU's democratic legitimacy while reinforcing its effective governance. In the opinion of the government, this shows that the Convention was operating largely in the spirit of the 'Laeken mandate', which stipulated that the Union should become more democratic, transparent and decisive.

The AIV is right to praise the Convention for producing a single document without options. This is indicative of the large measure of eventual agreement among the members about the direction the Union should take. Moreover, the AIV is very positive about the fact that the draft treaty unifies the existing treaties and abolishes the present pillar structure. The government shares the view of the AIV that this plan furthers the objective of clarifying and enhancing the constitutional order of the EU. The government feels that more than anything else, abolishing the pillar structure – at least in a formal sense – will promote cohesion and integration of the various policy areas. As far as the government is concerned, giving the Union legal personality is also a step in the right direction. The Dutch government had been pushing for this for some time.

Finally, the AIV applauds the fact that the ultimate text of the draft treaty does not disturb the institutional balance, as it initially threatened to. The government shares this view and believes that the active approach it took in the debate on institutions, together with Belgium, Luxembourg and other like-minded countries, made a significant contribution to the final product.

Making the Union more democratic and increasing democratic legitimacy

According to the AIV the draft treaty makes the Union more democratic, thanks to the rule that the Council's legislative work will henceforth take place in public and the provision granting the European Parliament joint decision-making powers (codecision) on all types of legislation on which the Council decides by qualified majority voting. The government embraced these proposals in the Convention and actively supported their inclusion.

In conjunction with this, the AIV welcomes the further strengthening of ties between the Commission and the European Parliament, due in part to the provision that the President of the Commission will, in future, be elected by the Parliament. Having said that, the AIV does however note that the European Council will continue to play a significant role in the electoral procedure. The government endorses this observation and therefore regards this as an area for improvement. The European Parliament's involvement in electing the President of the Commission should be expanded.

The government agrees that the decision to grant the European Parliament a say on the entire budget is a major step forward, provided that the institutional balance is safeguarded in the annual budgetary procedure. Finally, the government shares the AIV's hope that the revised subsidiarity procedure will enable national parliaments to become more involved in EU developments.

Enhancing effective governance

The AIV regards the draft treaty's increase in the number of policy areas where decisions can be taken on the basis of (qualified) majority voting as one of the most important changes to help enhance the Union's administrative decisiveness. The government concurs with this view. In that light the government is also pleased with the provision (article 24, paragraph 4, section 1) granting the European Council the option of instituting qualified majority voting in areas which currently require unanimity, without amending the treaty (the so-called general passerelle clause). This provision gives the treaty scope for development, in keeping with the evolutionary character of the European integration process.

It should be noted that not all of the government's suggestions vis-à-vis an expansion of qualified majority voting found their way into the eventual document. On the other hand, as explained in the government's memorandum to parliament of 16 September 2003 on the Dutch contribution to the IGC, the government would like to maintain unanimity in a number of policy areas, particularly the Financial Perspectives. In connection with this, it bears mentioning that the Italian Presidency has placed the scope of qualified majority voting on the agenda for the IGC.

The government shares the AIV's view that splitting the GAERC into a General Affairs (and Legislative) Council and an External Relations Council would represent an improvement. Apart from this observation, the AIV makes no further comment on the position of the Legislative Council. As stated in the 16 September memorandum to parliament, the government opposes the formation of a Legislative Council, whether as a subdivision of the General Affairs Council or as an independent entity. The government's opposition is both a matter of principle (a new formation of this type would detract from the coordinating role of GAERC and the substantive role of the various Councils of Ministers) and of practical objections (the line between legislative and executive activities is not always easy to draw). The option of allowing line ministers to take part in the Legislative Council does not adequately address these objections. The Netherlands is not the only member state to hold this view.

The AIV is pleased that the role of the Commission in the multilateral monitoring procedures (including right of initiative in the excessive deficit procedure) is being strengthened. The government had backed this change in a number of ways, including submitting a joint contribution (with France) in the Convention on strengthening the role of the Commission, a proposal which incorporated suggestions made by the AIV.

Critical notes

The AIV has a number of critical comments on the draft treaty, though it hastens to add that these comments should in no way detract from their generally positive assessment of the Convention's end result.

The AIV expresses regret that in assigning competences to the EU, certain policy areas were excluded from the harmonisation process, thereby restricting flexibility. The draft treaty recognises

three categories of competence: exclusive, shared and supplemental. The government believes that this classification promotes clarity. The AIV's criticism is focused on the last of these categories, though it should be pointed out that the policy areas excluded from harmonisation in this category by the draft treaty are limited and highly specific. In fact, these areas are already excluded from harmonisation. At the very least, this provision of the draft treaty does not represent a step backwards. The government has not opposed maintaining the status quo with respect to these specific areas. For the record, the government would observe that the flexibility article in the draft treaty has been broadened to include all policy areas in the treaty: this represents an expansion of the relevant provision in the current treaty (Article 308, EC Treaty).

The AIV sees the inclusion of an exit clause in the draft treaty as a step backwards with respect to the present treaties. The government shares this view: such a provision sends the wrong message. Explicitly leaving open the possibility of withdrawal (it already exists implicitly) runs counter to the idea that the Union has created a binding legal order which member states cannot simply withdraw from at will. For this reason, the government spoke out against this provision in the Convention.

The AIV also questions the hybrid construction of a 'double-hatted' Union Minister for Foreign Affairs (UMFA) as well as the plan to give both this Minister and the President of the European Council a role in the formation of the Common Foreign and Security Policy. The Presidency characterised the role of the UMFA as a topic that merits further attention at the IGC. The Dutch position for the IGC is that the current provisions, which clearly delineate the UMFA's competences and responsibilities, should be left as they are. It is the government's opinion that the institution of the UMFA, as provided for in the draft treaty, will increase the coherence of external policy and representation. More detailed arrangements will, however, need to be made on a number of points, including the Minister's relationship to the European Parliament and the President of the European Council. This matter will be discussed further at the IGC. The Netherlands will oppose the efforts of some member states, principally the United Kingdom, to place the UMFA entirely under the mandate of the Council.

The AIV sees the virtual absence of the subject of comitology from the Convention's agenda as a lost opportunity and therefore believes that this is a step backwards with regard to the Commission's executive competences. While it is true that comitology was not discussed at any length in the Convention, this is hardly surprising given that comitology relates to the implementation of relatively low-level legislation, which does not have to be set out in a treaty. Relevant to this issue is the fact that the Commission submitted a proposal during the Greek Presidency (2003-I) to amend the so-called Comitology Decision. Undoubtedly, the issues raised by the AIV figured in that discussion. If the articles on decision-making modalities in the draft treaty are adopted by the IGC, it can be expected that the Comitology Decision will be amended accordingly. The government believes that the Commission's executive powers have been reinforced, given that, in contrast to the situation under current treaties, the Commission can (under certain conditions) be granted the formal authority to enact delegated regulations, possibly of an executive nature, to supplement or amend a European law or framework law.

The AIV goes on to point out that no proposals have been made to ease the procedure for allocating new 'own resources'. The government is opposed to the creation of new own resources, as stated in its response (19 June 2003) to the AIV's May report. With regard to the decision-making processes for the Own Resources Decision, the government would remark that the draft treaty, in contrast to current legislation, makes a distinction between the decision-making requirements for the size and composition of the own resources (unanimous Council, approval by member states and consultation of European Parliament) and the implementing measures (qualified majority of the Council with the consent of the European Parliament). The government opposed this provision, as it was unclear what consequences, financial or otherwise, this distinction might have for the Netherlands. The original proposal made by the Presidium of the Convention, which applies the same decision-making modalities (i.e. unanimity) to both regulations, was clearer in its scope and purport and should therefore be regarded as the preferred course of action as far as the Netherlands is concerned.

The government accepts the AIV's contention that it should be possible to amend the policy regulations in part III of the draft treaty in a simpler way than those regulations included in parts I and II. This would promote flexibility. However, there was practically no support for this course of action in the Convention. As the Italian Presidency has put this item on the agenda of the IGC, it is not impossible that this provision will be modified after all.

Contents of the new treaty & the IGC

The government shares the AIV's view that the IGC should take care that its decisions do not come at the expense of the accomplishments of the Convention. This is in keeping with the government's own basic principle for the IGC: adhering as closely as possible to the result of the Convention. This principle is based in part on the belief that the result of the Convention contains many positive elements, for the Union as a whole and for the Netherlands. In line with the AIV's recommendations, the Netherlands will therefore urge member states to preserve the result, particularly its Community elements. This is not to say, however, that the Netherlands intends to refrain completely from proposing amendments to the document; a number of provisions need further clarification. This is especially true for the place of the Union Minister for Foreign Affairs within the institutional structure, the rules governing the presidency of the ministerial councils and the status of the Legislative Council. The Netherlands will take an active part in negotiations on these provisions.

Further to this point the government believes that several aspects of the draft treaty can be improved in ways that will ultimately benefit the Netherlands. These areas for improvement include, first and foremost, the decision-making process for the Financial Perspectives, eligibility for the office of the elected President of the European Council, the elimination of the Legislative Council and the role of the European Parliament in electing the President of the Commission. In negotiations at the IGC, the government will be mindful of the impact that the adoption of Dutch proposals would have on other sections of the draft treaty. The Netherlands still sees a number of opportunities for improvement. To achieve its ambitions, the government will engage fully in the negotiating process, responding to the proposals made by other member states and to the coalitions that develop in the course of the conference.

If civil-service preparatory groups are formed at the IGC, the AIV recommends the inclusion of a representative of the Commission and of the European Parliament. The proposal made by the Presidency on 1 September 2003 on the procedure for the IGC and discussed by the foreign ministers at the Gymnich meeting on 5 September does not provide for civil-service preparatory groups, or for any other kind. However, in a letter of 16 September to his fellow ministers on the procedural aspects of the IGC, the Minister of Foreign Affairs explicitly mentions the option. The Netherlands believes that the IGC should be held at ministerial level and opposes, in principle, civil-service preparation. If such preparatory groups are nevertheless formed, the government would have no objection to the AIV's suggestion.

The AIV advises the government to do its utmost to make clear to the Dutch people what the scope and consequences will be of introducing a new constitutional treaty for the European Union. The government has taken this advice to heart, since it recognises the great importance of encouraging the public to become involved in the European integration process. One aspect of this is the proposed referendum. During the Convention the government tried to foster public interest in 'the future of the Union'. In addition to interviews and speeches given by members of the government, the government's representative at the Convention acted as a point of contact for civil society organisations. At the Convention, representatives of trade unions, regional and local government, the police and various faith groups engaged in dialogue with him. Along with that, the government made information available to the public by means of public debates and websites. The government will continue in this vein both during and after the IGC.

[signed]

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[signed]

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