

Bertelsmann Foundation and Center for Applied Policy Research

(eds.)

Thinking Enlarged

The Accession Countries and the Future of the European Union

A Strategy for Reform

by the Villa Faber Group on the Future of the EU

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Members of the Villa Faber Group on the Future of the EU

Acknowledgements

Foreword

The debate on the future of the European Union (EU) has intensified and is likely to gain even more momentum in the months and years to come. The outcome of the last Intergovernmental Conference concluded at the Nice European Summit in December 2000 has officially put the EU in a position to enlarge. However, the results have by no means answered the entirety of questions on the practice, direction and progress of integration in an enlarged EU. On the contrary, the so-called post-Nice reform process, initiated only three months after the conclusion of the last Intergovernmental Conference, reflects the need to further improve the architecture of European construction. Although a next round of enlargement in the foreseeable future seems very realistic, upcoming fundamental reforms might be decided upon without the accession countries having joined the Union.

Until recently, politicians, experts and the general public in the EU-15 have focused on the consequences of enlargement without involving the views of the applicant countries seriously. A next effort to reform the Union cannot be an exclusive exercise of the EU-15, but must involve also the accession countries. The future member states are no longer content with their previous role as 'associated outsiders'. To be merely informed about the internal EU reform process will no longer suffice. Participation of the future member states in the reform process will stimulate the domestic debate on 'Europe' among the political class and encourage the involvement of wider parts of civil society. A public debate on the future of the EU may help the accession countries to reinforce the fundamentally political and 'historic' nature of the enlargement decision and to move beyond the predominant legal-technical approach of the negotiations.

The pressure on the future member states to express their positions concerning the EU's future will increase. The applicants will have to formulate more openly and offensively their viewpoints concerning EU reform and the *finalité* of the integration process. However, until recently most political representatives and intellectuals from the accession countries have framed the EU reform debate as an issue of interest mainly for the current member states and have refrained from a public engagement. The lack of knowledge on these issues of reform in the accession countries is not only the source but also the consequence of this neglect.

The present report of a group of experts from both the future and current EU member states elaborates an accession countries' perspective on the future of 'Europe', the central question being: What European Union do we aspire to? The paper attempts to answer this question from the viewpoint of the future new member states, a position that in many aspects coincides with the fundamental concepts and values shared in the current member states, as the members of the working group discovered. The report does not merely focus on the official agenda in view of the next Intergovernmental Conference, but rather goes beyond the so-called post-Nice agenda in identifying issues of overall concern for the applicant countries. In reflecting upon the historical, political and cultural experiences and (likely) dispositions of the accession countries, the Group identifies three main themes the new member states will consider as priorities: democratic governance, comprehensive security and solidarity and co-operation. In an effort to

identify strategic recommendations, the paper explains why the future member states attach particular importance to these aims and principles and sets out concrete proposals how to achieve them.

This report is merely a beginning and does not attempt to answer all the myriad of issues and problems that confront the European Union as it enters yet another decisive phase of its history. The current reforms and developments in major policy fields will prejudice the further path of integration and it is ultimately a question of legitimacy to involve the accession countries.

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October 2001

The Villa Faber Group on the Future of the EU

The Villa Faber Group on the Future of the EU – named after the *spiritus loci* of its meetings – is a group of 18 experts from both the accession countries and the EU-15 brought together by the Bertelsmann Foundation in Gütersloh and the Bertelsmann Group for Policy Research at the Center for Applied Policy Research (CAP), University of Munich, to elaborate a joint memorandum on the accession countries' perspective concerning future reforms of the European Union. The Group's considerations envisage to open the debate in the accession countries towards a member perspective and to enrich the intra-EU debate with a clear, active and substantive voice of the accession countries. The Group was formed in November 2000 and met five times over the course of the following ten months.

The Group represents a broad range of institutional, executive and academic expertise, although the views expressed herein do not reflect any official policy position, and the members participated purely in a personal capacity. In preparation for the meetings, individual members prepared topical papers which were discussed in the Group. A compilation of these papers will be published separately by the end of 2001. Martin Brusis and Janis A. Emmanouilidis of the CAP were responsible for writing the report and endeavoured to reflect faithfully consensus within the Group. However, given the complex range of subjects under discussion, this was not always possible, with the result that members of the Group do not necessarily share all the views expressed in this memorandum.

Executive Summary

This paper develops a position the prospective new member states might take on the future of the European Union. It has been written by a group of EU experts from the accession countries and the current EU member states who are concerned about the gap between the EU-15-centred views of the current ‘future’ debate and a public debate in the twelve accession countries that is preoccupied with negotiating and preparing accession. The Group seeks to overcome this gap by formulating three main priorities the new member states will and should address in an enlarged EU: *democratic governance, comprehensive security, solidarity and co-operation.*

Democratic Governance

The Group advocates that enhancing a democratic political process, improving citizen participation and reinforcing the Community method (see 1.2) are general aims that should guide the approach of the accession countries towards the agenda items of the so-called post-Nice process: the simplification of the Treaties, the status of the Charter of Fundamental Rights, the delimitation of competences, and the role of national parliaments. In view of these aims and items, the Group proposes the following actions:

- To enhance the democratic political process, citizen participation and transparency, a *Constitutional Treaty* should be elaborated. The Treaty should be ‘constitutional’ in the sense that
 - Europe’s public and citizens are involved in its formulation;
 - the Treaty reform outcomes go beyond a mere editorial simplification;
 - the new Treaty integrates all the essential, constituent provisions of the current Treaties in a first ‘constitutional’ part. A separate non-constitutional section should include procedural and implementation-related provisions and should be subject to an easier procedure for changing its provisions.
- The new Constitutional Treaty should
 - replace the current Treaties;
 - integrate the Union and the three Communities into an entity with a unified legal personality;
 - abandon the pillar structure of the EU;
 - define the EU’s objectives, competences and institutions;
 - incorporate a revised Charter of Fundamental Rights.
- The Constitutional Treaty should contain a *competence structure* making the allocation and scope of EU and national responsibilities more transparent and enabling citizens to hold the respective level politically accountable.
- A *clarification of competences* should not, however, be used to stipulate a concluding, definite catalogue of competences, to merely re-nationalise policies or to relieve European integration of its political and solidarity dimensions. Rather, the dynamism of

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European integration needs to be maintained, and competences should be redefined in view of whether the EU can perform a task effectively.

- *National parliaments* must become more involved in the EU policy process, since their current marginalisation both causes and indicates a deficit of democracy in the Union. National parliaments should be involved in the clarification of and political decision on competence assignments. This could be organised at an early stage of policy formulation through stronger consultation mechanisms. In cases of competence disputes a monitoring *Parliamentary Subsidiarity Committee* of national and European deputies could function as a body of appeal.
- To improve policy deliberation and political accountability of the Council and the European Parliament and to reinvigorate the Community method
 - co-decision should be extended to all issue areas now decided by qualified majority voting;
 - the combination of qualified majority voting in the Council and co-decision by the Council and Parliament should gradually become the general rule governing EU decision-making;
 - the complicated system of triple qualified majority voting should be abolished;
 - qualified majority voting should be extended to the areas of cohesion policy, social policy and indirect taxation.
- The European Parliament, the Commission and the Council should be strengthened by
 - extending the powers of the European Parliament to the full budget;
 - introducing an All-European list of candidates to the European Parliament;
 - entitling the Parliament to elect the Commission and the Commission President;
 - enhancing the co-ordinating functions and powers of the General Affairs Council with respect to other Council formations (including the European Council).
- Extending qualified majority voting, eliminating triple majority, endowing the European Parliament with the right to elect the Commission and its President and the further communitarisation of both Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (see below) will in effect *strengthen the Commission* as a driving force for integration.

Comprehensive Security

The Group has identified four key aims to guide developments in the areas of internal and external security:

- (1) Deepen the involvement of the future member states in the formulation and implementation of the EU's external and internal security policies in the pre-accession phase.
- (2) Strengthen the EU's role in international affairs by further deepening integration in the area of the Common Foreign and Security Policy (CFSP).
- (3) Improve coherence between the EU's external action and its internal security policies.
- (4) Build bridges to the direct neighbourhood of an enlarged EU.

In view of these aims, the Group proposes the following actions in the areas of CFSP and Justice and Home Affairs:

Common Foreign and Security Policy

- Effective decision-making, common external action and the need to overcome the out-moded pillar structure will require the enlarging EU to *partially communitarise CFSP*. The traditional civilian aspects of the EU's foreign policy, including non-military crisis management, should be brought closer to the Community method by
 - increasing the role of the Commission with regard to non-military elements of CFSP and linking the offices of the High Representative and the Commissioner responsible for external relations more closely;
 - fully involving the European Parliament in all non-military aspects;
 - striving for more qualified majority voting in the Council concerning the non-military aspects of CFSP;
 - bestowing the right of initiative upon the High Representative and the Commission.
- To strengthen the EU as a holistic international security actor, the Union needs to further develop its *operational assets and capacities*. Current and future EU members will have to intensify their efforts, streamline their overall military structures and increase both their national defence budgets and developmental aid spending.
- The accession states should become more involved in the strategic formulation of EU policies with respect to countries in their direct neighbourhood. The future member states will advocate and contribute to the adoption of an *Eastern Dimension*, modelled according to the EU's Northern Dimension initiative of interregional and cross-border co-operation.
- The EU's security and defence efforts should neither weaken *transatlantic solidarity* nor lead to a de-coupling from the United States, although the possibility of US disengagement must remain part of European strategic calculations.
- EU enlargement has the potential to strengthen the *Euro-Atlantic partnership*. However, transatlantic burden- and power-sharing should lead to a more equal and enhanced partnership from which both sides will profit.
- The future new member states should be offered a higher *degree of inclusion* concerning the EU's European Security Defence Policy (ESDP). The EU should create mechanisms of consultation and co-operation enabling the accession states to contribute to the debate on the development of Europe's security and defence architecture and to participate effectively in decision-shaping.
- To overcome uncertainties, concerns and even confusions over the course of future developments, the current and future EU member states should jointly formulate a *strategic concept* for CFSP/ESDP. Such a concept should define the strategic and operational objectives of the EU's security and defence efforts.

Justice and Home Affairs

- To improve the coherence and co-ordination of CFSP and Justice and Home Affairs (JHA), the EU should take into account the neighbourhood aspects of existing border regimes, visa and immigration policies when designing, implementing and revising common strategies. Proposals on JHA legislation should contain a '*neighbourhood impact assessment*'.
- The *Eastern Dimension* initiative should include a strategy of controlled permeability of the accession countries' eastern borders, a particular focus on their borderland regions, and a co-ordinated approach to manage migration flows together with the accession countries and their neighbours.
- A *European Border Guard* should be established, consisting of border guards from all member states, and based on the principles of equal partnership and reciprocity among new and old EU members.
- Following the fusion of the Single Market and the Schengen zone, there is a rationale for creating a *European Customs Service* composed of customs officers from all member states.
- The EU should develop a *regional approach* to the border control regime. The EU should support the establishment of Schengen-type border controls in countries joining later rather than between an early and a later entrant. Applicant countries not joining the EU in the first round of enlargement could be enabled to join the Schengen Information System on the same basis as Norway and Iceland.
- The EU should commit itself to lifting internal border controls as soon as a new member state meets a *specified set of criteria* regarding the operation of the Schengen regime.
- EU countries should no longer impose *visa restrictions* as an instrument to stop the emigration of Roma from the accession countries. The damage caused to trade, cross-border exchange and human relations is much greater than the possible benefit for the internal security of EU member states. The Union needs to develop a Europe-wide policy for improving the treatment of the Roma minorities and promoting their integration into societies.
- To increase the transparency of EU policies and to improve the conditions for public and political deliberation, the *co-decision procedure* should be applied to all issue areas of Title IV of the Treaty of the European Communities: border controls, asylum, visa, immigration, residence and freedom of travel of third-country nationals, judicial co-operation in civil matters and administrative co-operation.
- Issues of *police and judicial co-operation* in criminal matters should be transferred into the First Pillar and gradually be taken under the co-decision procedure. This reform would help overcome the high degree of distrust between member states' internal security bureaucracies and the concomitant bilateralism.

Solidarity and Co-operation

The Group advocates the concept of a developmental community for the EU that entails: (1) shared values and strong commonalities in models of democracy, rule of law and society among the members, (2) increased support for the less well-off members and (3) functional pooling of state sovereignties, increasingly subject to democratic control.

- The *Community method* is a key element of solidarity in the EU, as it generates solidarity-oriented policy outcomes and filters out the unilateral pursuit of national interests.
- Solidarity should become a *general evaluation principle* (comparable to the subsidiarity principle) orienting the (re-) allocation of EU competences and the necessary scrutiny of the EU's main spending policies, the Common Agricultural Policy and the Cohesion Policy.
- What constitutes a *public good* or a *public policy* to be delivered by the EU needs to be reconsidered and decided by the EU institutions.
- EU institutions should be able to autonomously assign the *revenues* received from the member states, whose contributions to the EU budget should correspond to their economic capacity (Gross National Product).
- The future new member states will expect the EU to demonstrate *strong solidarity and openness* towards applicant states that aspire to join the EU. The EU must include the accession countries in the elaboration of new and the reform of existing policies, and the same rules should be applied to all member states – new or old.
- While it is the task of the future new member states to create the enabling conditions for their economic catch-up process in the Single Market framework, the EU should reform and *refocus* its *spending policies*. Member states should be made responsible for spending EU resources.
- The *Structural Funds* support should focus on the less developed member states in order to better target EU assistance. The current eligibility threshold should be maintained, national co-financing rates more widely differentiated, and the ceiling on Structural Funds inflows increased if a state has a higher absorption capacity. Rural development expenditures that are currently part of the Common Agricultural Policy should be integrated into the Structural Funds.
- The principle of solidarity should guide the use of the instrument of *enhanced co-operation*. Enhanced co-operation based on solidarity between the participants and 'outsiders' of an enhanced co-operation requires
 - the continuous openness of those fields subject to a higher degree of differentiation;
 - the provision of solidarity mechanisms to latecomers enabling them to catch up and join a group of countries that have started an enhanced co-operation.
- The provisions on enhanced co-operation should be changed at the next Intergovernmental Conference. Enhanced cooperation should
 - apply also to policy-fields not covered by the Treaties;
 - not remain subject to a possible veto from one or more member states in the area of CFSP;

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- also relate to matters having military or defence implications.
- ‘Wider-closer’ co-operation, as the external dimension of the concept of flexibility, should be explored as an instrument to involve states outside an enlarged EU into the CFSP or other policies.

From the Convention to Ratification – Involving Future Member States

- The decision to grant the applicant countries an *observer status* does not coincide with the future member states’ claim to participate as full and equal members in the Convention and might be the source of further disappointment. Based on the perception that their views and positions would not be taken seriously, the accession countries could lose their true interest in the debate.
- The *Convention’s agenda* must include the four issues on the post-Nice agenda as well as other pressing institutional concerns. The accession countries should have the opportunity to express their views on which topics should be included in the deliberations.
- The accession countries should be represented in the Convention’s *Praesidium*.
- Due to the significance of a next reform as part of an overall constitutional process, the outcome must have priority over the rigidity of any *timetable*. If necessary, a reasonable delay should be preferred to a sub-optimal outcome and yet another Intergovernmental Conference fairly soon afterwards. The Convention must avoid formulating proposals on the lowest common denominator.
- Following the next Intergovernmental Conference, *national referenda* and the *ratification vote* in national parliaments should be held approximately at the same time.
- While no EU member is obliged to ratify the new Treaty, *dissenting states* cannot have veto power and durably harm the integration process. Therefore mechanisms should be designed to attach specific costs to the repeated rejection of a new treaty. In addition, constructive mechanisms should be created to accommodate the concerns of dissenters.

Overcoming the East-West Gap in EU Discourse

The European public has for nearly two years now seen a courageous competition among politicians who have sketched their visions of the future European Union (EU). Although this has been triggered and necessitated by the enlargement challenge, it is, in the minds of many participants, not a pan-European but an intra-EU debate. Most West European politicians, experts and the general public have started thinking from the current EU and sought to prepare the Union for enlargement. This discourse has opened into a broader discourse about the *'finalité'* of the EU where the current and the enlarged Union are viewed from the perspective of desirable ultimate states of affairs. This shift in perspective has been caused by the increasing awareness of the shortcomings of piecemeal Treaty reforms and by the vanishing attractiveness of current common integration projects among EU citizens (e.g. the Euro). Irrespective of the 'future turn', West European participants in the discourse tend to assume that what they are debating and deciding now may well affect the status of new members in the EU after enlargement, but ultimately, being members now, it is their right and task to set the future terms of EU integration. While this assumption can claim some legitimacy as long as EU reform is about enlargement preparation, it becomes increasingly problematic, the more EU reform turns into a future-driven debate that adds question-marks to the constitution-like nature of the current EU framework.

Future of the EU and enlargement

The predominant West European view has been mirrored by political and public representatives of the twelve countries currently negotiating their accession to the EU. They have been framing the EU-future debate as an issue of interest mainly for the current 15 member states, whereas the EU debate within the accession countries and between the applicants and the Union has mostly been concerned with the when and how of enlargement. This focus on the modalities of accession results from the prevailing technical-legal approach that considers the adoption of the complete EU legislation and the chapter-by-chapter negotiation of eventual derogation requests as the core problems to be solved. This approach has been proposed by the EU Commission and the member states, and it has been accepted by the accession countries which perceive themselves in a weak bargaining position.

Moreover, presenting and interpreting enlargement as a complex and bilateral negotiation between the applicants and the EU member states has two important, problematic effects on the domestic perception of the EU in the accession countries. First, the EU ceases to be an external point of reference symbolising the practice of Western democracy and orienting the political-cultural consolidation of democracy in Central and Eastern Europe. The Union appears to be merely an intricate and intransparent conglomerate of legal regulations that has little to do with democracy. Second, the negotiation setting and the publicly staged negotiation conflicts reinforce the inter-governmentalist perception of relations between the EU and the nation state: Negotiations are about defending 'our' national interests against the national

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interests of the EU member states organised through the Union, state interests which can be reconciled only if one party succumbs to the pressure of the other. As a consequence, this type of enlargement discourse in the accession countries contributes to the decline of public support for the accession and it can be assumed to prejudice basic dispositions of a country towards the EU after accession.

Lack of an EU reform debate

It is, however, not only the pre-occupation with getting in that causes the EU debate in the accession countries to be focused on enlargement. Accession countries lack an informed public opinion on the future of the Union which is at least partly due to the bias of the intra-EU debate where participants tended to frame the reform of the EU as a task to be solved by the current member states prior to the first accessions. In addition, political elites of the accession countries have until recently shied away from taking a more exposed position in the debate since they have been concerned not to alienate important actors inside the Union and thus jeopardise a smooth accession.

Overcoming the gap

The Villa Faber Group on the Future of the EU assumes that the current gap between the Western and the Eastern debate on the EU risks damaging public acceptance of the Union and the enlargement project in both halves of Europe. The Group seeks to transcend this gap by elaborating a position the prospective new member states might take on the future of the EU. The participants have posed themselves the central question: What European Union do we aspire to? In this way, the Group addresses both the intra-EU and the accession countries' debates with their specific premises and shortcomings.

Reinforcing the political dimension of enlargement

For the accession countries, the Group suggests reinforcing the political dimension of enlargement by opening a broader public debate on the future of the EU, including the relationship between possible or desirable integration models and a country's self-perception. A debate on the future EU and on the emerging member role within this Union may help accession countries to reinforce the fundamentally political and 'historic' nature of enlargement in their contacts with Brussels and the member states. Furthermore, this debate would both improve deliberation within its society and communicate to the EU institutions and member states a 'member identity' that does not need to commence with the formal-legal enactment of an Accession Treaty. It may thus counterbalance the detrimental effects of the narrow enlargement focus of the current debate and provide a 'member perspective' that allows accession countries to re-evaluate positions taken in the negotiations.

Assuming accession countries to be full members

For the EU member states, the Group aims at developing a line of reasoning that takes accession countries as if they were full and equal members. As such, the future new member states are considered as having not only legitimate concerns and interests, but also responsibilities, commitments and innovative ideas for the common project of European integration.

The paper anticipates and formulates the common position the new member states could adopt on the basis of empirical and normative considerations the working group has discussed. Its participants took into account the empirical situation in the accession countries on the one hand, i.e. national pre-dispositions and idiosyncrasies, public opinion trends, discourses of domes-

tic EU policy communities and the emerging EU policy patterns. At the same time, the participants explored and constructed arguments in a more normative fashion, relying on plausible assumptions of preference or norm hierarchies in the accession countries. The problems and politics of current accession negotiations are largely ignored, including the possible impact the pre-accession constellation might have on the formulation of positions on EU reform issues in the accession countries. The paper can also be read as a scenario that asks how the EU will work on the day after enlargement and, more specifically, how the twelve new member states will position themselves with regard to an agenda that has so far been vaguely defined as the 'future of the EU'.

In reflecting upon the historical, political and cultural experiences and (likely) dispositions of the accession countries, the Group identifies three main themes the new member states will consider priorities: democratic governance, comprehensive security, solidarity and co-operation.

- Governance in the EU should become more democratic by enhancing political deliberation, improving the participation of citizens and reinvigorating the Community model. These priorities suggest elaborating a Constitutional Treaty and empowering both the European and national parliaments.
- Security in the EU is to be understood as comprehensive in so far as it goes beyond a classic understanding of security and as it considers the specific security interests of future member states. This understanding should orient the development of and coherence between the Union's external and internal security policies and provide guidance while building bridges to the direct neighbourhood of an enlarging EU.
- Solidarity is understood as a Community-oriented policy approach of all – old and new – EU member states, based upon common norms, values, political-cultural practice and on the equal treatment of member states. This shared orientation should underpin the spending policies, the political-institutional dimensions of a future EU as well as the practice of enhanced co-operation.

The paper explains why the future new member states attach particular importance to these aims and principles and it sets out concrete reform proposals on how to achieve them.

1. Democratic Governance

1.1 The Perspective of the Accession Countries

Because the European Union is an institution between an international organisation and a state-like entity, the debate on its democratic constitution has somewhat necessarily fluctuated between concepts geared towards these two poles. Those who intend to model the Union according to the democratic systems of existing nation states are opposed to those who would prefer to construct the EU as an agency with powers delegated by the nation states according to their discretion and consensus. Whereas the former see political legitimacy as the result of involving European citizens in a way comparable to the legitimation of policy in a nation state framework, the latter see legitimacy as the result of both good performance and effective mandating / control by the legitimate representatives of Europe's nations. Analogously, the democratic deficit of the current EU is either conceived as the lack of citizen participation and representation in a system dominated by executives or as the failure of an organisation to perform the public functions assigned to it by the EU member states.

Citizens and nations as sources of political legitimacy

From the viewpoint of the accession countries, the future EU should continue to be located between the two poles of representative, participatory democracy as in nation states and the delegation of authority by nation states. The two opposite models of democratic legitimation can be reconciled, and it is precisely the dynamic synthesis of both models that has hitherto ensured the success of European integration and that can underpin democratic governance in a future EU. This position should not be taken as an argument in favour of the institutional status quo. Rather, in the view of the accession countries, there is a need and scope to overcome democratic deficits, to reform democracy in the EU and to further develop the balance of representative and delegative elements of policy formulation in the EU. The accession countries have three good reasons to take a position that combines democracy based on Europe's citizens and nations.

Democracy based on Europe's citizens and nations

First, 'Europe' has been an anchor not just to the democratisation process the countries of Central and Eastern Europe have undergone after the end of Communism. It has constituted a cultural and civilizational model for the countries of this region throughout their history, a point of orientation they had lost sight of during unfortunate historical periods and under the rule of major foreign powers. This historic-cultural texture differs from Western Europe and thus places the concept of European citizenship into a different symbolic-associative context. In Central and Eastern Europe, 'being European' is a value statement that endorses modernity, liberal democracy, civic identity and individual rights. Citizens and societies in this region have mas-

'Europe' as a cultural and civilisational model

tered the difficulties of economic and social transformation by knowing that they belong to Europe and what changes ‘returning to Europe’ would imply. This linkage of Europe and a domestic civilisational mission raises, on the one hand, high expectations concerning the democratic quality of life in Europe as it is embodied in the EU. On the other hand, it renders Central and East European citizens particularly deliberate European citizens who know well how European citizenship is to be distinguished from other forms of political and social behaviour.

Democracy and national sovereignty

The democratisation process in Central and Eastern Europe has also been closely linked to the restitution of national sovereignty. Six accession countries emerged as new nation states from the disintegration of Communist federations, and in the four other Central and East European accession countries the transition to democracy is also associated with full national sovereignty and the liberation from Soviet rule. This formative experience implies that democracy, democratic legitimacy and practice are embedded in a national framework and express the self-determination of the nation. As a consequence, the nation state and national-level institutions constitute, in the view of the accession countries, indispensable building blocks of democracy in Europe. This insight has implications for the way democratic governance is and should be organised on the EU level.

Parliamentary representation and citizen participation

Second, the accession countries constitute states with particular features that support predispositions towards a combination of citizen and nation-state-based democracy in the EU. All accession countries are representative, parliamentary democracies, where the parliament represents the aggregated interests of the citizens and is the main source of policy legitimation. In so far as there are directly elected presidents, they have a weaker constitutional position than parliaments and have ceded constitutional powers to parliament (e.g. Poland). This provides an important domestic point of reference for a parliamentary form of policy legitimation in the EU, whether through the European Parliament or through the involvement of national parliaments. In the Central and East European countries, citizens’ movements and civil society as a whole have been the driving forces of the democratic transition. Since citizen participation contributed to the founding of democracy in these countries, there are grounds and inclinations to place it also at the core of democracy in the Union.

Small states

Apart from Poland and Romania, all accession countries will be among the smaller member states of the EU. This renders them sensitive to the concerns that may arise from the perspective of a smaller member state and induces them to protect what they perceive as the interests of smaller member states. Although this disposition does not as such imply a more inter-governmentalist or integrationist approach, it provides a rationale for a strong Commission that is able to represent the general interest of the EU and to counterbalance the power of the bigger member states. As small states, the accession countries have reasons to fear popular majority rule in an EU that lacks a European *demos* comparable to the *demos* of its nation states. The risk of a numerical majority disrespecting vital concerns of majorities of citizens in the smaller countries militates against the use of

Europe-wide referenda or against the direct election of the Commission President by the European citizens.

Since all accession countries are unitary states, integration will – to a lesser extent than in federal or regionalised member states – create legitimacy problems of decisions that affect subnational governments but are taken without the effective participation of these governments at the EU level. Conversely, the accession countries have less reason to demand a stronger representation of subnational authorities at the EU level. Unitary state concepts represent an explicit decision against a federal state that lacks a historical tradition and is often suspected as leading to disintegration. These domestic statehood notions do not resonate with a federal organisation of the EU and the nation state becoming part of a larger federal structure. Moreover, in some Central and East European countries, choosing a unitary state denotes a purposeful break with the past status of being part of a federation. The bad historical experience with authoritarian federal states in these countries creates a negative bias with respect to proposals aimed at realising federal ideas for the EU.

Unitary states

Third, the accession countries have, in the course of the accession process, benefited from the Community method that combines elements of nation state and citizen representation as well as input and output legitimation in the institutional triangle of Council, Commission and European Parliament. This inter-institutional dynamic has helped to overcome the reluctance of member states with policy priorities other than enlargement. It has moved the EU from the association stage to the self-commitment of a conditioned accession, which found its manifestation in the Copenhagen criteria and represented a step beyond the commercial self-interests of incumbent member states.

Lessons from the accession process

Compromises reached in the Council and proposals of the Commission have facilitated problem-solving approaches when member state governments took blockade, rejecting or defensive positions during the negotiation of the Europe Agreements and the Accession Treaties. Examples are the disputes between Italy and Slovenia on property restitution, between Austria and the Czech Republic on the nuclear power station of Temelin, Germany's reservation concerning labour migration, Greece's insistence on taking in Cyprus, and Spain's concern with ensuring Structural Funds support during the negotiations on the Nice Treaty and on EU accession concerning the free movement of labour. The European Parliament has reinforced the overarching political dimension of enlargement against narrow sectoral interest coalitions of agricultural and protectionist industrial lobbies that found some support in the Council and the Commission. The Parliament has also done a lot to abandon the initial group-approach of accession negotiations and to base it on the principles of inclusiveness and differentiation according to merit.

A rationale for the Community model

The preparation for EU membership has been the engine and the main component of a comprehensive modernisation of government and public administration the accession countries have had to undertake. In overcoming domestic resistance and obstacles, reformers in the accession countries were

able to rely on the Commission, its technical assistance and its assessment as an external point of reference. Since the accession countries benefited from this transnationally driven modernisation process, there is a rationale to retain the Commission as an independent, objective and professional agency within the Community method.

1.2 Key Elements of Democracy in a Future EU

The meaning of 'Europe', their state features and accumulated experiences with the EU provide points of departure for the accession countries to define those elements they consider of major importance for the existing and future model of democratic governance in the EU:

- Political deliberation**
- *Enhancing a democratic political process:* Legislation, political decision-making and policy implementation should be more open to a process of political arguing and reasoning that encompasses the nascent European and the national public spheres. This deliberation process is understood as a procedure of political dialogue that ensures the access of all persons affected by or interested in an EU action, fair and public exchange of all opinions and arguments raised by the participants, and rules of decision-making that can be assumed to be acceptable to all participants. The normative-political meaning of 'Europe' as well as the salience of parliamentarism and citizen participation in the accession countries suggest politicising the policy process in the EU in a way that increases public and societal attention, control and accountability. The technocratic, elitist and legalist policy process prevailing in today's Union contributes to the intransparency of the EU for its citizens and harms the role of the Union as an anchor of democracy in the accession countries. Moreover, open discussion of political arguments is blurred and the policy process can be more easily captured by sectoral and national self-interests or by single-issue movements. Citizens of the accession countries, with their high expectations concerning democracy in Europe, may be repudiated and disappointed by these features of policy-making. Enhanced political deliberation will increase the political accountability of the EU institutions and the member states, contribute to clarifying their roles and competences and provide the indispensable correlate of a constitutionalisation of the Treaties.
- Citizen participation**
- *Improving the participation of citizens:* The EU should be brought closer to its citizens by increasing the possibilities for direct participation and strengthening the powers of institutions representing the citizens. The Central and East European experience is that citizens often think and act more 'European' than politicians expect them to do. This asset of the accession countries should be used and translated into participation-oriented reforms and a parliamentarisation of the EU. There is neither a principled opposition nor a trade-off between increasing the powers of the European Parliament and the powers of national parliaments. Both levels of parliamentary deliberation and control are necessary and should receive more powers and functions in the future EU. In

addition, institutions representing organised civil society should be strengthened. While there is no European *demos* today, the EU polity should be built as an institutional arrangement that facilitates the emergence of such a *demos*. This implies that conditions should be created that support, or at least do not hinder, the development of a common European political identity, political culture, public sphere and associational relations.

- *Reinforcing the Community method*: The Community method seems to be the best existing way to reconcile and balance nation-state-based and citizen-based democracy, while providing the framework for effective governance. Core elements of this method are: a strong Council which represents the European nations and national legitimacy, restricts the problems of majority rule in a European society with persisting national plurality but enables, through qualified majority voting, space and incentive for policy deliberation; the European Parliament which represents a European public and what may become a future European *demos*, which also organises political deliberation and scrutinises the work of the Council and the Commission; the Commission which is, through its particular role in the policy process between Parliament and Council, even more committed to performance, professionalism and objectivity than a national executive led by a political majority may be. Reinforcing the Community method allows to manage an enlarged EU. The Working Group considers the Community method the preferable alternative to attempts aimed at building a federal EU or at shifting policies towards inter-governmental co-operation. The accession countries have benefited from the Community method because it has facilitated enlargement. Moreover, they can consider the Community method as the best model to respect their sovereignty and ensure their participation as small and unitary states and as newly established nation states.

Community method

1.3 How to Improve Democratic Governance in the EU

An enhanced political process, citizen participation and the Community method represent not only the most important building blocks of democracy in the EU as seen from the viewpoint of accession countries. They are also general aims that shape the position of the accession countries concerning the items the Heads of State and Government have, in their Declaration on the Future of the European Union, put on the agenda of the so-called post-Nice process: the simplification of the Treaties, the status of the Charter of Fundamental Rights, the delimitation of competences and the role of national parliaments.

Opting for a Constitutional Treaty

The Declaration on the Future of the European Union adopted in Nice calls for a simplification of the Treaties with a view to making them clearer and better understood without changing their meaning.

Deficiencies of the current treaties

A simplification seems overdue since the accumulation of long and complicated Treaties – as the product of successive Intergovernmental Conferences – has become difficult to use both by experts and the general public.

The current Treaties are characterised by the intransparency of primary law, as the result of the extent and structure of legislative norms, the complex dispersal of norms in a variety of texts (four basic treaties, numerous protocols and agreements) and the fact that objectively interrelated issues are regulated by different parts of the primary law.

In addition, the organisational separation of the European level into three Communities and the Union and the latter's division into three Pillars impedes a simple perception of the European Union by the public and in many respects has anyhow lost its factual justification.

Moreover, the essential guidelines and constitutional structures are no longer visible due to an insufficient hierarchy of norms. The difference between Treaty provisions that are sufficiently general to be defined as constitutional and marginal elements which cannot have the same permanence as constitutional provisions of the Treaties is not clear.

Finally, the missing differentiation between elementary and marginal norms makes the timely development and amendment of primary law difficult. Even less important norms can merely be changed, developed or repealed after a consensus among the member states has been reached and ratification taken place.

Four models

Any simplification of the Treaties must counter the deficits of the current treaty structure and achieve a higher degree of clarity and comprehensibility. The result of a simplification must be a more rational, readily-understandable, stringent and transparent basic document.

In principle, there are four main models for simplifying the Treaties:

- *Editorial simplification, purification and modernisation* of the Treaties without substantially changing the content of the *acquis*.
- *Fusion of the basic Treaties* (TEC, TEU, Euratom-Treaty) into one single Treaty.
- *Formulation of a Constitutional Treaty and division of the Treaties into two parts* – with the first including the essential, constituent elements of the EU and the second more easily changeable, containing all procedural and implementation-related provisions.
- *Constitutional model*: Adoption of a new text to become the Constitution of the EU.

In view of the desire for more democracy, citizen participation and transparency simple editorial changes (model 1) or a fusion of the current Treaties

(model 2) do not seem sufficient. On the other hand, the elaboration of an entirely new text (model 4), providing the EU with a Constitution worthy of the name, does not seem politically realistic, at least not for the time being. A Constitution in the conventional sense of the term would equal the establishment of a sovereign state or at least something entirely different from the current Union.

In order to enhance the EU's democratic political process and improve transparency and citizens' participation, the Villa Faber Group holds that the preferable alternative is to elaborate a Constitutional Treaty (model 3) including the separation of constitutional provisions (constitutional section) and a second section defining all the procedural and implementation-related provisions concerning the Union's policies (possibly added in the form of separate protocols). The elaboration of such a Treaty would include an editorial simplification and the fusion of the Treaties. Moreover, it would replace the current Treaties, provide for the merging of the European Union and the three Communities into a single and coherent entity, with a unified legal personality and policy-area-differentiated competences and put an end to the confusing construct of a three pillar structure of the EU. An understandable, logical and easily readable Constitutional Treaty would provide the Union with a document for explaining the EU to citizens in both the EU-15 and the accession countries.

The elaboration of a Constitutional Treaty would require an understanding about those elements of primary law which are to be categorised as fundamental and constitutional. Elements of a Constitutional Treaty may be:

Elements of primary law

- a definition of the legal status of the EU with respect to national and international law;
- a definition of its main objectives, competences and institutions;
- provisions on the democratic legitimation of the EU;
- and a list of fundamental rights constituting EU citizenship.

The constitutional-like provisions of the Treaty should be changeable only on the grounds of a final decision by the member states and the subsequent ratification procedures. The governments and parliaments of the member states would thus have the final say when it comes to changing the Constitutional Treaty. Provisions, on the other hand, which are not constitutional in their character could be changed according to an easier procedure initiated by a majority of member states or by the European Parliament acting by an absolute majority of its members. Following negotiations in the Council, the decision to amend the non-constitutional parts of the future consolidated treaty should be taken unanimously or by a qualified majority by the (European) Council after obtaining the assent of the European Parliament. This formula could replace, to good effect, the twenty-seven or so national ratification procedures which would otherwise be needed in tomorrow's Europe. The national parliaments (and the member states as a whole) would remain 'masters of the constitutional texts', while the EP would have substantial influence concerning the amendment of 'functional' texts. Ideas to create a new body made out of representatives from both national parliaments and

Procedure for changing the Constitutional Treaty

the EP for non-constitutional treaty changes (e.g. a permanent conference of parliaments or ‘Congress’) will blur the distinction between levels of government and therefore should be rejected.

Paving the way for a constitution

Although the post-Nice agenda merely calls for a modest simplification of the Treaties, the idea of a European constitutional process will be a central theme of the next IGC. The elaboration of a Constitutional Treaty will – regardless of the positions taken on the final architecture of the Union – further pave the way for an EU Constitution, without however resulting in a constitution in the conventional sense of the term. However, the new basic document can only be characterised as being a Constitutional Treaty if the final product and the process by which the new Treaty has been elaborated will qualify as such. The final product must be a transparent text divided into two sections, fusing the Union and the three Communities, abandoning the current pillar structure, defining the EU’s objectives, competences and institutions and listing the rights of EU citizens. Concerning the process, the debate on and the adoption of a Constitutional Treaty must – contrary to the past practice of Intergovernmental Conferences – involve a wide range of social actors, thereby reaching out to Europe’s citizens. A process of this kind, going far beyond a public relations exercise, can contribute to defining the meaning of European integration and to constructing a European identity through the medium of public discourse and through an identification with the constitutional order established by the Treaty. Although less than a constitution, the Constitutional Treaty would have a positive effect on the formation of a European identity, since it would reinforce the legitimacy of the Union in the eyes of its citizens. If either the outcome or the process are less far-reaching, the final result of a simplification effort cannot and should not be labelled as a Constitutional Treaty.

Lessons from EUI and CAP draft treaties

Even though the work of research institutes cannot replace a wider public process, the draft treaties by both the European University Institute, Florence, and the Center for Applied Policy Research, Munich, have proven that the recasting of the Treaties is feasible from a technical point of view. The necessary elements of a Constitutional Treaty are already included in the provisions of the existing Treaties, so that no great modifications would be necessary. The current legal inventory contains an almost complete Constitutional Treaty with all crucial general elements. Both draft treaties of Florence and Munich demonstrate that there is no need for a constitutional ‘big bang’ – as most changes have already taken place in the course of European integration, perhaps without being actually appropriately noticed. However, while drafting a Constitutional Treaty two fundamental deficiencies of the current legal inventory will become evident: (1) the *lack of fundamental and human rights* and (2) the *lack of a clear division of competences*.

Current status of the Charter

The lack of fundamental and human rights in the current legal inventory of the EU can be countered by the Charter of Fundamental Rights worked out by the Convention under the chairmanship of Roman Herzog. The Charter is not yet a legally binding text, since it was merely politically proclaimed by the Heads of State and Government but not incorporated into the Treaties at this stage. However, the Nice Declaration on the future of the Union calls for a clarification of the future status of the Charter.

The Group believes that the Charter is an innovative and modern document and that it should be included into the Constitutional Treaty in order to strengthen the position of the EU as a normative community. The simplification of the Treaties as part of an overall constitutional process will most likely put pressure on the member states to integrate the Charter into the Constitutional Treaty. However, before incorporation, the existing Charter of Fundamental Rights must be revised and aligned with national Constitutions in both the EU-15 and the accession states. Moreover, there is a need for a more streamlined and consistent document. The Charter must be brought in line with the basic rights already part of the current Treaties (i.e. non-discrimination, equal rights, social rights, citizenship).

Revising and Incorporating the Charter

Clarifying European and National Competences Prudently

The elaboration of a Constitutional Treaty seems impossible without a more precise and systematic structure of competences explaining to citizens the range and the limits of EU power. Enhanced political deliberation will require an increase in political accountability. It is in this sense, that a clear delimitation of powers is indispensable, even though it constitutes a highly difficult task.

The present delimitation of competences between the European Union and the member states, as the product of a step-by-step approach, is neither systematic, transparent nor coherent. It is almost impossible for the European public to identify which of the vertical level of government in the EU – European, national, sub-national – is responsible for a certain decision or action. The present principle of case-by-case empowerment has contributed a great deal to the dynamism and developmental openness of joint policies. However, the existing inventory of competences (Art. 3 TEC) seems rather arbitrary, does not concur with the overall system in the Treaty (Articles 23-188 TEC) and provides neither a list of priorities nor a qualitative distinction between individual policies. This obscures political accountability in the relationship between the EU and the member states and hinders citizens from holding the Union, the national government or, in the case of shared powers, both levels politically responsible.

Deficiencies of the current competence structure

A revised competence structure needs to equal a systematic and more precise definition of the division of competences. The existing allocation of powers must be examined according to its appropriateness and if necessary be more concretely defined, supplemented and most importantly systematised. The central aim must be to work out a competence structure which makes the allocation and scope of responsibilities more transparent for politicians and citizens – although total transparency will never be possible, since the outcome of any revision of the current competence structure will mirror a trade-off between the requirements of multilevel governance that is necessarily opaque and the necessity to increase transparency.

Definition of competence categories

The Group favours a clear division of competences clarifying

- in which policy areas the Union is in fact responsible and empowered to make decisions (exclusive competences);

- which areas belong to the Union only to an extent, or are merely coordinated by it (shared competences);
- which policies are in principle dealt with by individual states without the participation of supranational institutions.

These three categories of competence need to be determined and abstractly formulated and incorporated into the Constitutional Treaty in a separate part laying down the EU's responsibilities. Each category should be introduced by some general provisions clearly defining the prerequisites and the procedures for a certain level to become active. Within this differentiation, a negative definition of competences is crucial for the critical cases – thus providing an answer to what, at least for the time being, should not be a responsibility of the Union.

Reducing the number of legislative procedures

A delimitation of powers aiming at a higher degree of transparency will necessitate the reduction of the variations of legislative procedures. In the present system, decisions in a specific policy field are taken on the grounds of a variety of legislative procedures rather than on the basis of one single formula. As a result, it is almost impossible to figure out who is politically responsible for a certain decision. A new competence structure aiming at a systematic, transparent and coherent structure thus requires a reform of individual policy-fields and a substantial reduction of the present procedural diversity. An important step in this respect would be the introduction of qualified majority voting in the Council coupled with the co-decision procedure involving the European Parliament as the general rule governing the Union's decision-making (see the last section of 1.3).

The Group argues for a prudent clarification of competences that tackles the following problems and tries to avoid the related misperceptions, traps and risks.

Rejecting a definite catalogue

First, the initial call for a *definite* catalogue of competences seems outdated. Whatever a new competence structure will look like, it should never be a final product. The fact that the EU's competence structure has been integration-oriented, thereby allowing the gradual transfer of powers to the Union, has provided the EU with a decisive element of openness and dynamism. A delimitation of competences can never be absolute and final. The Union must be able to become active if political circumstances or external pressure require it to do so.

Claims for re-nationalisation – extent and intensity of policy formulation

Second, the call for a clearer division of competences should not be linked to popular demands for a re-nationalisation of certain policies (e.g. the agricultural or cohesion policy). Politicians expressing their disapproval with the actual implementation of certain policies attributed to the Union, publicly demand that competences should be transferred back to the member state or even regional level. However, a re-definition of the delimitation of powers should always include the possibility for both, a devolution of responsibilities to a lower level or a transfer of competences to the EU level. In the end, it is not about calling into question whether a certain policy should or should no longer be in the responsibility of the EC/EU. It rather is a question of the extent and intensity of a policy formulation on the European level, which in the end should be determined according to the Union's ability or inability to perform the respective task.

Third, the re-ordering of powers will be an instructive exercise in defining in more concrete terms the principle of subsidiarity. However, an attempt to re-order the Union's powers must not be interpreted as seeking to reduce European integration to its simplest form, or even as the 'window of opportunity' to empty European integration of its political and solidarity dimension and return it to nothing more than a free trade zone. In many cases, the transfer of competences back to a lower level would merely lead to an apparent but not actual extension of the powers of the nation-state. At the same time there would be a double loss: member states would lose their influence on the formulation of policy in other member states and a policy transferred back to the national level would lose its quality as a common project with common responsibilities and goals.

Defining the principle of subsidiarity in practice

Finally, any new competence structure should not threaten the future solidarity between current and future member states (see 3.3).

The efforts to clarify the future structure of competences between the European and national level cannot leave the organisational and institutional structure of an enlarged EU unchanged.

Involving National Parliaments

The final point on the post-Nice agenda concerns the future role of national parliaments. The EU has a democracy deficit in so far as national executives gathered in the Council engage in legislation while the national parliaments are often only informed by their governments and lack the means to effectively participate in the preparation of legislation. The European Parliament cannot compensate for the role of national parliaments since it is not fully involved in all EU legislation and since its legitimacy is much weaker than that of national parliaments, as it lacks a European demos it could claim to represent. The Conference of European Affairs Committees of the national parliaments (COSAC) has a low profile and only weak formal participation rights.

Democracy deficit

One option to strengthen the role of national parliaments would be to complement the EP with a second chamber or third chamber (if one takes into account the Council as part of the EU legislature) of national deputies which would either participate in all legislative work – with the same rights as the current EP, which would become the first chamber – or perform a more limited review function. However, the establishment of yet another parliamentary body would further increase institutional complexity.

Second chamber of national deputies

An alternative option would be to enhance the mandating powers of national parliaments or to streamline the powers of the respective national committees (i.e. definition of basic common standards for European policy-making) and increase communication between them. It seems vital to ensure that national parliamentarians know and take into account the concerns of other member states. A significant additional task would be to put national deputies into a position to pressure national governments to fulfil their obligations concerning EU policies.

Enhancing and streamlining the powers of parliaments

Consult with national parliaments when assigning EU tasks	Involving national parliaments should become a key strategy to clarify and decide the allocation of competences. Even if the EU proves successful in clarifying its competence structure, many policy areas will still be characterised by overlaps and sharing of powers, for reasons which often appear convincing and are basically accepted by all member states. Thus, there is a need to develop a mechanism of political consultation that enables the Commission and the member states to explore whether their envisaged legislative proposals would affect sensitive domains of national sovereignty and would be perceived as infringements on national competences in (other) member states. The Commission already informs national parliaments through its communications, Green and White Papers, and the Council can unanimously decide to inform COSAC on a legislative proposal. These forms of consultation should be strengthened, e.g. by making a consultation mandatory if legislative proposals are based on the general task assignment of Art. 308 TEC or by removing the unanimity requirement for consultation. A consultation with national parliaments at an early stage of policy formulation could support policy deliberation and a broader political consensus for assigning tasks to the EU level.
Procedure for settling competence conflicts	In the course of a re-ordering of powers, the procedure and institutional structure for settling conflicts on the question of which level of the Union enjoys a certain competence needs to be further clarified. Differences of opinion between the legislative institutions of the EU/EC (Council/European Parliament) and the legislatures on the member state level are currently resolved by a final decision of the European Court of Justice (ECJ).
ECJ as the final court of competences	The ECJ should remain the court for settling conflicts of competence. Proposals to create an additional court of competence should be rejected. However, providing national parliaments with a right to appeal to the ECJ in cases in which these institutions question the legality of an action undertaken by the Union should be considered.
Parliamentary Subsidiarity Committee	Moreover, one could consider the creation of a <i>Parliamentary Subsidiarity Committee</i> consisting of representatives of the national parliaments and the EP in order to monitor compliance with the subsidiarity principle. Every government and every parliament (including the EP) would have to appeal to such a committee asking it to express its opinion in those cases in which the Council, the EP or a national parliament question the competence of the Union. A decision by the Committee against the questioned legal act would have to oblige the Council or the Parliament to either decline a Commission proposal or to explicitly express the reasons which necessitate the action of the Union. Should the Council or the Parliament insist that the Union should act, it will be again up to the ECJ to decide whether such an action is in accordance with the principle of subsidiarity.

Reforming EU Institutions and Decision-Making

Deficits of the IGC 2000	Notwithstanding the important aim of increasing the member states' parliaments involvement in EU decision making, further adaptation of the Un-
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ion's institutional structure in the prospect of enlargement is a necessity. The last Intergovernmental Conference (IGC) has officially put the Union in a position to welcome new members. However, the Nice reforms are by no means sufficient to guarantee the efficiency, legitimacy and public acceptability of an enlarged EU. In view of the next IGC, the reinforcement of the community method seems to be the best way to achieve a more balanced, effective and democratic institutional system and a preferable alternative to attempts aimed at building a federal Union or shifting policies towards inter-governmental co-operation. The next institutional reform must go beyond the current post-Nice agenda, thus not merely limit the agenda to the future role of national parliaments, but include other institutional reforms.

Apply the co-decision procedure to all issue areas now decided by qualified majority voting

A key problem of democracy in the EU is that the introduction of qualified majority voting (QMV) in the Council has weakened policy legitimation by nation states in numerous areas. This loss of democratic legitimacy has not been systematically compensated by legitimation through the European Parliament. The IGC 2000 extended the co-decision procedure to some provisions but missed the chance to improve the internal coherence of the legislative process by aligning co-decision and QMV as a matter of principle. The extension of the co-decision procedure would increase the powers of the Parliament and provide incentives for policy deliberation in the EP, thus countering the legitimacy deficit. Furthermore, it would link majority-based legitimation in the Council to a majority in the Parliament and thus institutionalise a standard procedure of legislation that ties Council and Parliament together as two integral parts of the EU legislative branch.

Develop the combination of qualified majority voting and co-decision into the general rule governing EU decision-making

The extension of co-decision to all areas covered by QMV should be the first step towards a further reduction and unification of decision procedures that would replace the co-operation procedure with the co-decision procedure and unanimity voting in the Council with QMV in those areas where co-decision is already applied. This would result in two sets of legislative procedures: As a rule, the Council acts with qualified (simple) majority and requires the support of the EP (co-decision or assent) and, in exceptional cases related to matters of particular importance for EU member states, the Council decides unanimously with the assent or consultation of the EP. Issue areas decided with unanimity and the consultation of the EP should be scrutinised and transferred into the co-decision procedure if there is no serious reason for depriving the Parliament from an effective participation. Such a unified and simplified legislative procedure would improve the transparency of EU decision-making and the political accountability of both the Council and the Parliament. Aspiring to further simplify the decision-making procedures one should moreover consider the idea to eliminate the system of triple QMV (qualified majority of votes, majority of states and a majority of EU population) as introduced at the Nice IGC.

Extend qualified majority voting to indirect taxation, social policy and cohesion policy

The Treaty of Nice has extended QMV to some provisions that were previously subject to unanimity, but it has (temporarily or conditionally) retained the unanimity rule in several important issue areas. The importance of solidarity in an enlarged EU, the reinforcement of the Community method and the need for both political deliberation and effective governance suggest to apply QMV to the Treaty provisions regulating indirect taxation (turnover taxes, excise duties and other indirect taxes, cf. Art. 93, TEC), social policy (Art. 137) and cohesion policy (Art. 161). In social policy, the Nice Treaty envisions the optional and unanimous introduction of QMV for some issues, though not for social protection issues, the core of national welfare states. Structural and cohesion funds regulations shall be decided with QMV only when the next financial perspective and the related inter-institutional agreement are adopted (with unanimity) which is likely to postpone the introduction of QMV until after 2013.

In general, the unanimity rule should continue to apply only to matters of constitutive nature, such as the amendments to the first section of the Constitutional Treaty, the accession of new member states or the system of own resources.

Extend the decision-making powers of the European Parliament to all budget expenditures

Currently the EP enjoys rights of proposal with respect to obligatory tasks of the EU which amount to more than half of the total budget. Extending the powers of the EP to all expenditure lines of the budget will increase the power of the Parliament and can be expected to generate a political deliberation on the priorities of the EU as expressed in budgetary allocations. In order to balance nation-state- and citizen-based legitimacy, the member states should continue to decide on the total size of the budget.

Introduce an All-European list of candidates to the European Parliament

In order to enhance democratic legitimation, a certain number of seats in the European Parliament (e.g. 10%) should be assigned to parliamentarians elected from an all-European list. The introduction of such a list would encourage a true pan-European election campaign and support the emergence of a number of Europe-wide known politicians.

Endow the European Parliament with the right to elect the Commission and the President of the Commission

The Nice Treaty envisages that the members and the President of the Commission are nominated and appointed by the Council with qualified majority but confines the EP to approving the Council's candidates. This represents important progress in terms of effective governance compared to the current unanimity practice, but political deliberation on the best Commission team and, consequently, the political legitimacy of the Commission elected would be substantially increased by engaging the EP. In addition, a parliamentary

election would clarify and increase the political accountability of the Commission to the Parliament which can now dismiss the Commission by a vote of no confidence. Furthermore, by electing the Commission, the EP would become more similar to national parliaments electing national executives, thus its role would be better understandable to citizens who in turn might take a stronger interest in the elections to, and the work of, the EP.

Strengthen the Commission

The Commission must regain its lost weight in the inter-institutional relationship among the Council, the European Council and the EP. The introduction of qualified majority voting for the designation and appointment of members of the Commission and the increased powers of the Commission President are positive steps. However, since decisions in the Council based on qualified majority voting will be harder to obtain after Nice, the position of the Commission has been weakened. It will be more difficult for the Commission to find approval for its legislative initiatives in the Council. Moreover, the Commission's role in the very dynamic areas of Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA) does not correspond to its significance in Pillar One. Extending qualified majority voting, eliminating triple majority, endowing the EP with the right to elect the Commission and its President and the further communitarisation of both CFSP and JHA (see below) are reforms that will in effect strengthen the Commission as a driving force for integration.

Improve the Council's position in the institutional setting

The European Council tends to disperse its energies on an agenda which has constantly increased without extending the already limited time available. As a result the European Council is no longer in the position to decide on the most fundamental issues and thereby give strategic guidance to the EU. The European Council must provide orientation for the Union and not become a co-ordinating body or take detailed decisions, which should rather be taken at the level of the General Affairs Council. For this reason, besides being co-legislator, the (General) Council must regain its key co-ordinating role in the EU's inter-institutional architecture and provide for the overall coherence of the Union's policies. Such a reform will not be at the expense of neither the Commission nor the EP but rather strengthen the entire institutional setting. A number of concrete reforms seem necessary for the General Affairs Council to regain its traditional role:

- conflicts of interest and competence between the different formations of the Council must be decided on the national level;
- the frequency of General Affairs Council meetings should be increased to once a week;
- the Council's practical working methods need further improvement (number of people sitting around the Council's table; timing of press conferences; clearer division of the agenda of meetings etc.).

On a more general level, one could give thought to the idea of changing the composition of the General Affairs Council by replacing the foreign ministers with ministers responsible for European affairs, reporting directly to their respective head of state or government. These ministers would be responsible for co-ordination on both the national and European level, thereby providing for more coherence of the EU's activities in both national capitals and Brussels. As a consequence, the Council consisting of foreign ministers should concentrate on issues related to the CFSP, which at any rate is requiring more and more of their attention. In general, current and future member states should attempt to streamline European policy-making at the national level.

2. Comprehensive Security

Maintaining and establishing security in the twenty-first century and especially following the terrorist attacks on the US need to be understood as multidimensional tasks. A comprehensive notion of security in a future enlarged European Union must go beyond a classic military or political understanding of security by encompassing also economic, societal and sub-national dimensions. The classical instruments to ensure the current and future member states' security no longer seem sufficient and there is a strong need to link the internal and external aspects of EU security. Moreover, the concept of comprehensive security applied to the needs of an enlarging EU also entails the necessity of considering now the specific security interests of future member states in an inclusive manner.

The notion of comprehensive security

2.1 The Perspective of the Accession Countries

The accession countries and the current member states of the European Union share most of the traditional and new security threats in a highly interdependent and globalised world. The threat perceptions concerning concrete and potential dangers to internal and external security and the resulting foreign and security policy priorities do, however, differ to a certain degree. The specific formulation of both external and internal security policies in the accession countries are to a great extent determined by three significant factors: the geopolitical proximity to unstable regions, the concerns about new dividing lines following EU enlargement and a strong transatlantic orientation.

Threat perceptions and security policy priorities

As a result of their geopolitical situation the accession states are subject to particular risks. The Central and East European countries border unstable regions in both the East and South East of Europe. The situation in the Balkans is still very much dominated by ethnic conflicts, the lack of state consolidation and the mismanagement of economic transformation with consequences for the overall regional stability. Unlike in the 'Western Balkans' the potential for conflict in Eastern Europe has been regionally and politically controlled. However, the situation in Belarus or Ukraine, whose national sovereignty is a strategic concern for the relationship between the Central and East European countries and Russia remains both economically and politically unstable. Moreover, the relationship to Russia is affected by the situation of the Russian-speaking populations in the Baltic states and the dependency of many countries in Central and Eastern Europe on Russian gas and oil.

Geopolitical proximity to unstable regions

Overall, the geographical proximity to economically and politically unstable regions is not only an issue involving risks in the classical sense of security. Many accession countries are subject to new risks like migration, international terrorism or high levels of imported organised crime which cannot be countered by applying traditional, national instruments of foreign or security

policy. This incomplete list of actual or potential risks to security gives evidence, why the current and future policies towards the enlarged EU's direct neighbourhood is of such particular significance for the accession states.

Risk of new dividing lines

EU enlargement has the potential to create new dividing lines in Europe. Transferring the EU border and visa regime to the accession countries may disrupt cultural, economic and ethnic linkages existing between them and their neighbours. The implementation of the Schengen acquis jeopardises one of the achievements of the democratic transition in Central and Eastern Europe, namely the free movement of people, thereby hampering regional and cross-border co-operation. Such new dividing lines would be aggravated if a next round of EU enlargement would endanger the accession of other countries still outside the Union.

Transatlantic orientation

Most accession countries perceive their security settings in the light of strong relations with the US. The pro-Atlantic orientation and the resulting preoccupation with maintaining the transatlantic link, stem partly from historical experience, from the threat perception of Central and Eastern Europeans and from the lack of faith in the support and effectiveness of the security policy of Europe. The policy of the US has been perceived as consistent and effective in realising the adopted goals. This perception is of particular importance, since these countries, especially those still aspiring to become members of NATO, continue to feel more exposed to dangers of instability than perhaps much of Western Europe does. Moreover, past reliance solely on West European powers – particularly prior to, during and shortly after World War II – did not work to the benefit of Central and Eastern Europe. From the standpoint of most accession countries, continued involvement of the United States in Europe's security structures and guarantees is crucial.

2.2 Key Elements of Comprehensive Security

As EU enlargement is moving closer, the actual and potential threats and risks to the security of the accession countries affect the overall security situation of the Union. Unlike other organisations, the EU is currently developing or has already at its disposal the entire range of policy instruments and thus has the potential to manage the extended risks to both internal and external security. However, in order to finally shake off the label of an economic giant but political dwarf, the EU needs to exploit all of its potential and further develop both its Common Foreign and Security Policy (CFSP) and its Justice and Home Affairs (JHA) policies.

The security situation and perceptions in the accession countries provides a point of departure for defining those key elements which the future member states consider of major importance for developments in the areas of internal and external security:

Deepening involvement

- *Deepening the involvement of the future member states in the pre-accession phase:* The security settings of the current accession states, both those specific to them and most of all those common with today's EU, call for their early and intensive involvement in the formulation and

implementation of the Union's external and internal security policies. The applicants have trustingly participated in the implementation stage, mainly through consistent alignment with the EU in CFSP, but increasingly in the field of JHA. This encouraging common experience, along with a certain time lag between input and output in security, whereby the positive effects of significant security efforts can be considerably delayed over time, is a sound rationale for more intensive involvement of the accession states in policy-shaping in both the internal and external dimension of security in the pre-accession period.

- *Strengthening the EU's role in international affairs:* In the light of globalisation, increasing interdependence and new threats to international security, no individual European state is able to counter threats solely on a national basis. Current and future member states can make themselves heard only if they are members of a strong European Union able to define its common interests and translate them into concrete policies, without, however, endangering the transatlantic relationship. In order for the Union to defend its interests and maintain the values on which it is based, the EU must have access to the full range of foreign policy capabilities. It is in this respect that the Union as an important civilian and currently developing military actor will have to develop a global outlook and a coherent view capable of using the entire set of non-military and military, preventive and crisis management oriented foreign and security policy instruments. Being the world's biggest market, largest trader and most important purveyor of assistance, the EU should always seek a consistent and co-ordinated formulation and implementation of its external policies – foreign trade, political relations and humanitarian and development assistance. **Strengthen the EU in international affairs**
- *Improving coherence between internal and external security:* Europe's external action needs to be consistent with its internal security policies. The effects of the EU's internal and external policies must aim in the same direction. This is especially crucial as the Union must be able to tackle new challenges well beyond the classic diplomatic agenda. The EU's foreign policy efforts, including external trade questions and external assistance, must take into account the external aspects of Justice and Home Affairs such as migration policy or transnational crime. The EU has abundant skills, resources and experience to address these issues and to engage in the prevention and management of conflict arising out of them. But the EU must be able to mobilise and deploy them more consistently, quickly and effectively. **Improving coherence**
- *Building bridges to the direct neighbourhood of an enlarged EU:* The danger of new dividing lines following enlargement needs to be countered because it threatens political stabilisation and economic development. Policies toward the eastern and the southern neighbourhood of an enlarged EU will have to take into account the different nature of potential new political, economic, legal and security divisions. More clarity is needed here especially with respect to the prospective relations to Russia, Ukraine and other post-Soviet states. **Building bridges**

2.3 Developments in the EU's Foreign and Security Policy – Opportunities and Problems in View of Enlargement

CFSP/ESDP developments The European Union's CFSP and especially its European Security and Defence Policy (ESDP) have witnessed marked developments. In less than three years, the establishment of ESDP has added a whole new dimension to CFSP and has brought new dynamics into building the EU's role as a holistic international security actor. Most importantly, the Union has established the institutional structures for its enhanced role in both non-military and military crisis management and has come up with the so-called 'Headline Goal' of desired military force levels for a Rapid Reaction Force, capable of deploying 50-60000 troops in crisis management operations – including peace-making – after 2003. Overall, the EU seems today committed to playing a more visible and a more coherent international role.

Contribution to CFSP/ESDP as security providers From the perspective of the accession states, CFSP/ESDP cannot be perceived in isolation from broader foreign and security policy goals. Nor can they be separated from the developments inside the accession states and from internal policy concerns of the Union as a whole. EU enlargement has definite potential to add to the dynamism of CFSP/ESDP and increase the political legitimacy of the Union as an international foreign policy and security actor. The accession states already contribute to the success of CFSP/ESDP, since their domestic stability alone adds to the stability of a wider EU neighbourhood. In more practical terms, the accession states have already pledged forces to the EU military force. While their defence and military contributions will probably be modest, their peace-keeping experience during the past ten years places the accession states in a solid position of reliable participants in future crisis management operations. Overall, the accession states are not merely security gainers, but also security providers from whom the EU's security situation does profit. In many respects, the accession countries can be expected to treat further developments in the area of CSFP/ESDP with greater understanding than some of the current member states, which oppose European integration in the areas of security and defence.

Effects of enlargement However, enlargement also brings with it a number of unanswered questions that – if not handled properly and timely – could pose problems for the future functioning of common foreign, security and defence policies in an enlarged EU. Enlargement raises the natural question of how the CFSP may be affected upon the full inclusion of as many as twelve new member states. Compared to past enlargements, the next round of EU widening will have a greater impact on the Union's foreign and security policy. First, enlargement is bound to bring both a host of opportunities and possible problems with respect to future effectiveness and cohesion of CFSP/ESDP. Second, the size and the geopolitical reality of the EU will change more fundamentally compared to any previous waves of enlargement.

Strengthening the EU's Foreign and Security Policy

Limits of intergovernmentalism As EU enlargement is becoming more and more pressing and as the debate concerning the future of European integration is intensifying, it seems im-

portant to link the discussion on the future constitution of Europe with the developments in the area of CFSP/ESDP. An EU on its way towards a Constitutional Treaty needs to assure its capability to act, to raise the efficiency of the policy-making process and to promote the acceptance of European foreign and security policy among its citizens. Already at this stage, the prevailing intergovernmental approach in the area of CFSP is no longer adequate and will become even more problematic in a Union enlarging to 27 or more member states. Effective decision-making and common external action may be increasingly difficult to achieve without further moves towards at least the partial communitarisation of CFSP. Additionally, in an attempt to overcome the outmoded pillar structure and in the light of the growing need to link internal and external policy tools, pressure toward moving the field of foreign and security policies closer to the Community method will increase. At present, there are no strong advocates among the EU-15 in favour of such moves. Enlargement, however, will add pressure to address the issues of efficiency, democratic accountability and legitimacy.

Attempts to further communitarise CFSP, of which ESDP is only one though important element, must exclude the sensitive field of military affairs, to which the current and future member states attribute the high value of national sovereignty. Military crisis management as one branch of the EU's Security and Defence Policy must not be linked with the term 'communitarisation'. Instead, matters of joint concern in the military sphere of ESDP should continue to be handled by means of intergovernmentalism. On the other hand, the traditional civilian aspects of the EU's foreign policy including non-military crisis management should be brought closer to the Community method as the resources necessary to implement them are to be found mainly in the area of today's Community competences.

Civilian and military aspects of CFSP

In this respect, the role of the European Commission with regard to non-military elements of CFSP should be reinforced. That the Commission has pledged itself to non-military crisis management seems reasonable and in accordance with the logic of EU external relations. But if the coherence of military and non-military measures should be ensured and the non-military capabilities and capacities put comprehensively to use, the Commission must be granted an even stronger role.

Reinforcing the role of the Commission

The competences of the Commissioner responsible for external relations would have to be increased accordingly and co-operation between his office and the office of the High Representative for the CFSP would have to be linked more closely in order to create synergy effects and to counteract an emerging institutional competition. In the search for a face and voice for EU foreign policy it will prove imperative that third states can recognise a continuously present and active representative who is able to rely on the support of the member states. In a long-term perspective and following the introduction of communitarian elements to the non-military sphere of CFSP, one should consider merging the offices of the High Representative and the Commissioner responsible for external relations.

Co-operation with the High Representative

The question of legitimacy is of central importance for promoting acceptance of the CFSP among EU citizens. In addition to the primary role accorded to national parliaments it is therefore necessary to involve the European Parliament in all non-military aspects, thus providing for a double le-

Legitimacy and the role of the EP

gitimation. Its participation should be guaranteed not only by the EP's right for its view to be taken into consideration and its right to be regularly informed, but it ultimately requires the EP's parliamentary assent.

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| Extending qualified majority voting | In an effort to further strengthen the efficiency of the EU's foreign and security policy dimension it is worth striving in a mid-term perspective for more qualified majority voting in the Council concerning the non-military aspects of CFSP/ESDP. The right of initiative would have to remain with the member states. However, it should also be bestowed upon the High Representative and the Commission. |
| Development of operational assets and capacities | Institutional developments alone will not suffice to enhance the EU's role as a holistic international security actor. The Union will need to further develop its operational assets and capacities. It is in this respect, that the current and future member states of the EU will have to further intensify their efforts, streamline their overall military structures and increase both their national defence budgets and developmental aid spending if they want to live up to their own expectations. |

Direct Neighbourhood of an Enlarged EU

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| Geopolitical implications | The enlargement of the EU will have profound geopolitical implications for the CFSP/ESDP, since it will bring the Union into direct contact with regions of Europe that are unstable. An enlarged Union will neighbour countries like Ukraine, Belarus, Russia, Moldova and – if Turkey joins the EU – even Syria, Iraq, Iran, Armenia, Azerbaijan and Georgia. In certain cases, the enlarged EU will be building upon existing strategies, in others the Union will be forced to start from scratch. |
| Facing new divisions | Approaches toward the eastern and the southern neighbourhood of a wider EU will have to consider the different nature of new political, economic, legal and security divisions. Enlargement to the current accession countries might give the whole Continent a much clearer dividing line between Russia and the rest of Europe. Moreover, Ukraine, Belarus and Moldova will be separated from the Union by a much more distinct and less porous frontier. |
| Defining membership conditionality | While the Union has been rather open to offers of possible membership to the unstable successor states of former Yugoslavia (e.g. Macedonia) or to Albania, the 'European' prospects for future eastern neighbours of a wider EU seem less clear. The EU should define a clear and sufficiently detailed set of conditions whose fulfilment may pave the way to an offer of possible membership. Thus far these offers have been made on an <i>ad hoc</i> basis as a result of specific crises rather than as the consequence of a consistent policy. |
| Strategic involvement with respect to direct neighbourhood policies | The accession states should become more involved in the strategic formulation of EU policies with respect to countries in their direct neighbourhood. The future member states should now contribute their own concepts to the debate inside the EU-15. The accession states can bring new value to future specific policies and Eastern initiatives of the EU. Their respective comparative advantage stems from common historical ties, geographic and linguistic proximity, as well as shared experience of post-communist transition. The accession states will enter the Union offering better knowledge of |

realities and understanding of (local) attitudes, a unique set of experience, know-how and flexibility gained in their respective paths of post-communist transition. While their financial and military resources remain limited, the accession states can bring in fresh ideas, regional initiatives and innovative modes of institutionalised interactions in relation to future eastern and southern neighbours of an enlarged EU. Such potentially positive gains can best be utilised only when the accession states and the EU already communicate, interact and challenge one another in the context of the accession process.

The future member states will advocate and contribute to the adoption of an *Eastern Dimension*, comparable to the Union's 'Northern Dimension' initiative as a model for interregional and cross-border co-operation. Current accession states are most likely to pay attention to and to come up with concrete proposals concerning future EU relations, in particular with Russia, the Ukraine and South-Eastern Europe. EU-Russian relations need to be further deepened. The fact that Moscow takes a basically positive view of the EU's emerging role in international affairs should be preserved and developed. Indeed, the nature of the Union as a holistic security actor can help broaden a more co-operative relationship with Russia which, with regard to security matters, is still all too often seen in narrow politico-military terms. The obstacles to implementing the EU's Kaliningrad strategy need to be overcome. Technical questions regarding the traffic of goods and people should be solved and the regional climate for investment should be further improved. Concerning Ukraine, the EU should take its geopolitical significance for the security of a wider Europe seriously and support policies and measures that enhance the stability of this country. The Union should intensify EU-Ukrainian dialogue on security and defence issues.

Eastern Dimension

The future member states can bring added value to regional policy efforts in an enlarged EU. Less politically visible and more incremental tools of foreign and security policy can play a useful role in this respect, including practical initiatives at a more local level. Initiatives in the framework of existent Euroregions cutting across the future dividing lines of EU insiders and outsiders (e.g., the Carpathian Euroregion cutting across Poland, Slovakia, Hungary, Ukraine and Romania) could create pressure for concrete policies at the regional, national and EU level. Local solutions may prove most applicable not only in the case of the Carpathian Euroregion but also in other sensitive areas, such as Kaliningrad. Apart from official structures there are other important agents of change, reform and good neighbourly relations. Most notably, the enlarged EU should take advantage of the fact that many post-communist accession states have a relatively well-institutionalised, regionally inter-linked non-governmental sector.

Regional policy efforts in an enlarged EU

Coping with Areas of Dissonance

Although CFSP is potentially sensitive to possible future implications on national sovereignty, such concerns have not been an issue thus far in the accession states. Overall, the domain of CFSP has not posed problems for the accession countries. While preparing for EU membership, the applicants

Historical record

have consistently aligned themselves with declarations, demarches, common positions and joint actions of the EU. In certain cases – such as during the Kosovo conflict – the accession states have even joined sanction regimes imposed by the Union vis-à-vis third countries. Moreover, co-operation and co-ordination of positions takes place at international forums and inside international organisations, such as the United Nations. Finally, the framework of CFSP has encouraged good neighbourly relations between accession states (e.g., between Slovakia and Hungary).

In spite of this overall positive record, the remarkable progress in the field of security and defence in the framework of ESDP has created some dissonance between the EU-15 and the candidate countries. The debate in the candidate states about ESDP has most visibly focused on the relations between the North Atlantic Treaty Organisation (NATO) and the EU and on the question of participation by current accession states in the present and future developments of ESDP.

EU-NATO relations

Concerns about EU-NATO relations

ESDP touches on and in some ways competes with other security and defence initiatives and priorities that have shaped the foreign policy goals of post-communist countries throughout the 1990s. Most accession states are concerned that European security and defence efforts might drive a wedge between the EU and NATO, membership in which remains one of their primary security policy priorities.

Towards an equal and enhanced partnership

The Group holds that further developments in CFSP/ESDP must not weaken the transatlantic security relationship. The North-Atlantic Alliance should continue to provide the cornerstone for European defence in the event of a strategic conflict. NATO must remain the primary forum for co-ordination of policy between the two sides of the Atlantic. A strengthened and efficient EU must neither weaken transatlantic solidarity nor lead to a de-coupling from the United States. On the contrary, EU enlargement is likely to strengthen the Euro-Atlantic dimension of ESDP. However, transatlantic burden- and power-sharing should lead to a more equal and enhanced partnership from which both sides will profit. NATO and the EU should each recognise the unique and complementary contribution that the other makes to the broad area of collective security and classical territorial defence and to collective reactions concerning new security risks.

EU's operational autonomy

As one of the concerns over the future developments of the transatlantic link, the possibility of US disengagement must remain part of European strategic calculations, because in that event Europe would be under pressure to take over a stronger role as a capable security actor. Consequently, if European assets and capabilities remain inadequate, then Europe's weakness would not only underline its inability to deal with its own vital security interests but accelerate US disenchantment. If the EU wants to ensure operational autonomy and the ability to act independently in some crisis situations without the active assistance of the US, a certain degree of duplication of means and capabilities will be necessary – particularly in the fields of strategic intelligence, advanced communications, tactical surveillance and reconnaissance, strategic and tactical lift and logistics.

Concerning practical EU-NATO co-operation, the Atlantic Alliance has principally agreed to make its structures and facilities available to the EU. The finalisation of the EU's announced Initial Operating Capability of its Rapid Reaction Capability by December 2001 hinges upon an agreement with non-EU NATO countries. However, the Turkish government has vetoed the Union's assured access to NATO planning facilities for crisis management despite pressures from the EU and the US. Turkey argues that the participation of third countries in the EU's decision-making process in the area of ESDP seems insufficient. Turkey's veto currently lies at a critical junction in the realisation of the Union's goal to develop an operational Rapid Reaction Capability by 2003. The current problems need to be overcome in order to ensure the efficiency of EU-NATO relations without a major influence on the evolution of the ESDP. Turkey should thus withdraw its veto, not at least because continued deadlock might otherwise create considerable tensions in transatlantic relations.

Implications of Turkey's veto

Improving 'third country' participation

Besides the future relationship between NATO and the EU, the debate in the accession states about ESDP has most visibly focused on the question of their participation in the EU's security and defence efforts. The future place of the six non-EU NATO members in Europe (Czech Republic, Hungary, Iceland, Norway, Poland and Turkey) as well as that of the nine accession states that are not NATO members (Bulgaria, Cyprus, Estonia, Latvia, Lithuania, Malta, Romania, Slovakia and Slovenia) is one of the thorniest issues in the development of ESDP.

The EU has offered third countries a certain degree of participation in ESDP. At the same time, the EU has pointed out that any co-operation with third countries must fully respect the decision-making autonomy of the EU and its single institutional framework. The EU has rejected transferring the rights countries enjoyed as associate members (non-EU NATO members) or associate partners (remaining EU accession countries) of the Western European Union (WEU). Following the transfer of WEU functions to the EU, the involvement of accession states in the ESDP's decision-shaping process does not seem comparable to the rights they previously enjoyed in the WEU context. Compared to the EU, NATO has also been keener on involving outsiders. Through NATO's Partnership for Peace Program (PfP) a number of states have become partial decision-shapers of NATO.

EU offers

Although participation of accession states in either NATO or WEU structures never implied involvement in the decision-making process of these organisations, it has certainly allowed a comparatively greater involvement in the preparation of decisions. Despite the fact that the accession states will become full-fledged actors in the institutional structures and the decision-making of ESDP upon EU enlargement, present modalities of participation in the building of ESDP do not seem sufficient. The current structures imply both a certain degree of exclusion and a certain lack of decision-shaping contribution on the side of the applicants. While it is foremost necessary for ESDP to establish its decision-making and its institutional identity, it is equally important to offer a greater degree of inclusion to those countries that are soon to enter the Union – without treating non-EU members on a

Increasing the degree of inclusion

par with EU members at the decision-making stage. Overall, it is in the EU's interest to include the soon-to-be member states under a more encompassing umbrella of partnership. Their current inclusion may not only affect their behaviour after EU accession but also sets a specific precedent for dealing with future potential accession states for EU membership.

Concrete options Concrete alternative options might include (1) the acceptance of the WEU institutional set-up, (2) the introduction of a 'virtual veto', (3) the inclusion of third countries directly affected by a certain crisis or (4) the association of third countries by means of the instrument of 'wider' closer co-operation (see chapter 3.4).

Need for a Strategic Concept In more general terms, the Group recommends that the European Union create mechanisms of consultation and co-operation, that enable the accession states' to contribute to the strategic debate on the development of Europe's security and defence architecture. Although enlargement will formally resolve the issue of inclusion, the state of the debate and the priorities in the areas of security and defence among the accession states indicate a number of issues that could backfire in a wider EU. For this reason, and in order to overcome a number of uncertainties, concerns and even confusions over the course of future developments, the current and future EU member states should jointly formulate a *Strategic Concept* for CFSP/ESDP. Future co-operation and action in the area of foreign policy, security and defence may not be possible without more a formidable, efficient and strategically formulated CFSP. The goals of ESDP are already reshaping the role of the European Union. These may give new meaning and impetus to the Europe's foreign policymaking. With prospects for enlargement to the first post-communist countries in 2004, the EU should take a more encompassing view of its activities. While successful institutionalisation seems necessary, further headway will be determined by acquiring real capabilities, by clarifying the relationship to NATO and by defining the CFSP's strategic and operational objectives – not at least in the light of new security concerns – in one comprehensive strategic document.

2.4 Internal Security Issues – Towards Coherence and Community Action

In the course of the enlargement process, the EU has attached increasing importance to exporting its emerging border control, visa, asylum, refugees and immigration policies to the accession countries. The future member states have to accept these policies upon accession but are not involved in their formulation. Most of the legislation has been developed during the accession negotiations, and rules have been codified by the EU in view of the challenges enlargement would pose to internal security.

Complex and evolving legislation Since the Amsterdam Treaty, asylum, immigration, refugee, visa and border control policies have been integrated into the First Pillar of the EU. The European Council of Tampere has set far-reaching aims concerning a common European asylum system, the fair treatment of third country nationals, management of migration flows and partnership with countries of origin.

The evolving regulations and procedures in these fields and the legislation originating from the integration of the Schengen Agreement into the Treaties constitute an inherently complex policy area. The accession countries are particularly affected since the body of legislation has been dynamically developing and the applicants lack resources, established routines and expertise in implementation. From the viewpoint of the accession countries, the transfer of justice and home affairs policies has entailed serious problems.

Applicants have to join the Schengen border control regime in two stages. Due to technical, legal and political reasons they can fully join the Schengen Information System only as EU members, and the Council will consider the removal of border controls only after they have joined and manage to apply the System effectively. The terrorist attacks in the United States have provided the EU with even more reasons to insist on a reliable and secure implementation of the Schengen regime. For the applicants, the contingent and phased removal of border controls implies that they have to incur the costs prior to accession, but the benefits will materialise only after accession, and possibly years afterwards. Doubts can be raised as to whether the tightening of border controls will be the most effective policy to stop illegal migration and organised crime.

Contingent and phased removal of border controls

Transferring the EU border and visa regime to the accession countries may disrupt economic, cultural and ethnic linkages existing between them and their neighbours. Accession countries joining the EU first have to commit themselves to erecting Schengen borders with the prospective late-entrants, most notably Bulgaria and Romania. Visas have to be introduced with respect to neighbouring countries. For example, Poland will have to introduce visas for citizens of Ukraine, which runs contrary to its foreign policy priority of supporting an independent and democratic Ukraine and anchoring Ukraine in Western Europe. Hungary will be forced to impose visas for the Federal Republic of Yugoslavia and Ukraine, countries with significant ethnic Hungarian minorities living across the borders. Romania will have to adopt visa restrictions in its relation with Moldova, a country with a large share of ethnic Romanian citizens.

Visa restrictions and neighbourhood linkages

The applicants' scope for relaxing the visa requirement by issuing national visas is very limited. The implementation of the Schengen *acquis* jeopardises one of the achievements of the democratic transition in Central and Eastern Europe, namely the free movement of people. It also hampers cross-border co-operation, one of the most visible dimensions of European integration. For the EU, transferring the Schengen regime eastward entails an increasing conflict between its internal and external security interests. Impeding the free flow of persons by erecting Schengen borders runs contrary to the idea of economic integration as a foreign economic policy instrument to achieve political stabilisation and economic development.

By exporting its immigration problem eastward, the EU establishes an asymmetric relationship with the accession countries: In order to remove its borders and accept the cross-border mobility of citizens there, the EU shifts the burden of migration management to the applicants. The accession countries have already experienced increasing numbers of asylum-seekers, refugees and migrants from the New Independent States, the Western Balkans

Asymmetric relationship

and Asia. Re-admission agreements with the current EU member states oblige the accession countries to accept immigrants who have crossed their territory in order to access the EU, whereas the eastern neighbours of the applicants are less interested and co-operative in adopting the EU migration regime. The Commission proposal to involve the accession countries in the envisaged open method of co-ordination for migration policy is an important step forward, but further support is necessary.

Inappropriate bilateralism

Justice and home affairs policies are still characterised by a high degree of bilateralism that is visible in the diverging visa policy responses to stop Roma migrants and in the competition of member states to transfer their border control system to the accession countries. The EU now has a ‘white-list’ of countries whose nationals do not have to obtain a visa. However, individual member states can impose additional restrictions bilaterally on the nationals of particular countries if they wish. Several countries have done so (e.g., the UK, Ireland, Belgium and Finland) in order to stop the emigration of Roma people claiming persecution. This has had a discriminatory effect on the whole population of a country and has hampered cross-border trade and economic co-operation. Since there is no common, unified best practice of border control, candidates are left with the delicate decision of adopting, for consistency reasons, the border control regime of a particular EU country, with all political implications such a decision might have.

Problems related to intergovernmentalism

The intergovernmental nature of the policy process has contributed to the intransparency and complexity of the legal regulations, making it more difficult for the European public and citizens to be informed and observe EU policies. Both the lack of public participation and the restricted roles of the Commission, the European Parliament and the national parliaments (through COSAC), particularly in the sensitive area of police and judicial co-operation in criminal matters, lead to a deficit of democratic legitimacy.

How to Improve the Justice and Home Affairs Policies of a Future EU

In the view of the Group, these problems should be addressed by strategies aiming at better policy coherence and at Community-based instruments and policy mechanisms:

Linking JHA and CFSP

- The coherence and co-ordination of CFSP and JHA needs to be improved. To achieve this, the EU should take into account the neighbourhood aspects of existing border regimes, visa and immigration policies when designing, implementing and revising common strategies on Russia, Ukraine and the Western Balkans. In addition, proposals on JHA legislation should contain a ‘*neighbourhood impact assessment*’ that considers the specific exposure of the accession countries and/or future new member states. This would ensure that the neighbourhood dimension of JHA could be adequately respected and that the conflicting logics of external and internal security could be better reconciled.
- The EU should fully involve accession countries in formulating its neighbourhood policy towards Eastern and South-Eastern Europe. This could be achieved by developing an *Eastern Dimension* similar to the

extant Northern Dimension (see also 2.3). With respect to justice and home affairs, such a framework of inter-regional and cross-border co-operation should include a strategy of controlled permeability of the eastern borders of the accession countries, a particular focus on borderland regions of the accession countries, and a co-ordinated approach to manage migration flows together with the accession countries and their neighbours. EU policy formulation could benefit from the specific knowledge and experience accession countries have acquired in their neighbourhood relations with Ukraine, Belarus, Russia or the Western Balkans.

- A *European Border Guard* should be established, consisting of border guards from all member states who are specially trained to serve in joint missions. Countries with an external border would transfer their control duties to the European Border Guard, share the burdens of border policing with all member states, and ensure that common standards are applied on their border. Countries without an external border would contribute to the costs of border policing directly and/or via the EU budget and would get access to sensitive information through their national officials serving in such a border guard. A common border guard would better enable the current member states to build confidence in the external borders control, its reliability and security. The European Border Guard needs to be based on the principles of equal partnership and reciprocity among new and old member states. **European Border Guard**
- With the fusion of the Single Market and the Schengen zone, there is a rationale to create a *European Customs Service* composed of customs officers from all member states. A European Customs Service could act more effectively against smuggling and other cross-border crimes and ensure common standards. Through a joint institution, member states could share the financial burdens (and revenues), exercise a joint control and thus develop mutual confidence. **European Customs Service**
- To achieve an inclusive enlargement process, the EU should develop a *regional approach* to the border control regime. This implies that it should not support the establishment of Schengen-type border controls between an early entrant country, such as e.g. Hungary and a later entrant, such as e.g. Romania. Rather, the EU should support the improvement of border control regimes in Romania directly. The regional approach of course should not imply that the decision to remove borders between the Schengen countries and a new EU member state would depend on a later entrant's compliance with the Schengen obligations. Avoiding such a dependency and the related uncertainties requires communitarising border control regimes. Thus, the regional approach provides another reason for establishing a European Border Guard and Customs Service. A regional approach would also help to overcome the high degree of bilateralism that still characterises JHA. **Regional approach to the border control regime**
- The lack of political will to involve later entrants into the Schengen Information System should not block the regional policy approach. Applicant countries that will not join the EU in the first round of enlargement

could be enabled to join the System on the same basis as Norway and Iceland. In order to prepare for accession to the System, the EU should organise a framework for a systematic exchange of information and for practical co-operation between Ministries of Interior and border guards of all accession countries and the member states.

Definition of clear and specific criteria

- Concerning the operation of the Schengen border control regime, the EU should set out specific criteria for the accession countries to meet before and after accession, and distinguish clearly between the two. It is evident that the current member states bordering the applicants are unlikely to remove border controls as soon as their eastern neighbours join the EU. As a result, the applicants will have to implement the Schengen acquis without gaining the benefits of free movement of persons as soon as they join. In order to facilitate the political management of the adjustment process for the new members, the EU should commit itself to lifting internal border controls as soon as a new member meets a specified set of criteria. This process should not be left vague and unspecified, or it will be much resented in the accession countries, particularly given the transitional period that the EU has imposed on the movement of workers from Central and Eastern Europe.

A Europe-wide policy to integrate Roma

- EU countries should no longer impose visa restrictions as an instrument to stop the emigration of Roma from the accession countries. The damage caused by such a wide-ranging, undifferentiated measure for trade, cross-border exchange and human relations is much greater than the benefit it may yield for the internal security of EU member states. The Union needs to develop a Europe-wide policy for improving the treatment of the Roma minorities and promoting their integration into societies. Improvements to the situation require changing mindsets and prejudices in society rather than containment policies between states. The problems of Roma should not just be a bilateral issue between EU member states and accession countries, and the condition of Roma in current member states should be assessed alongside that in the accession countries.

Extending co-decision

- The co-decision procedure should be applied to all issue areas of Title IV TEC: border controls, asylum, visa, immigration, residence and freedom of travel of third-country nationals, judicial co-operation in civil matters and administrative co-operation. The Amsterdam Treaty makes the application of the co-decision procedure contingent upon an unanimous decision of the Council and the expiration of the current transitional period in 2004. The Nice Treaty has not substantially altered this restriction. The application of the co-decision procedure would imply that the Commission becomes the only institution to initiate policies, ensure cohesion and transparency. The Council would be enabled to use qualified majority voting in order to integrate the existing, highly diverse legislation. The European Parliament would get full control powers. In effect, this would significantly increase the transparency of EU policies in these areas and improve the conditions for public and political deliberation on justice and home affairs issues.

- Issues of police and judicial co-operation in criminal matters (Title VI of the TEU) should be transferred into the First Pillar and gradually be taken under the co-decision procedure. Currently these issues are decided by the Council with unanimity (implementation decisions require only a qualified majority), the Commission shares the right of initiative with the member states, and the European Parliament is only consulted or informed. The reform would endow the Commission with the sole right of initiative, introduce qualified majority voting in the Council as the general rule and assign a negative veto power to the European Parliament. Such a communitarisation would help overcoming the high degree of distrust between member states' internal security bureaucracies and the concomitant bilateralism.

Transfer of police and judicial co-operation to Pillar One

3. Solidarity and Co-operation

3.1 The Perspective of the Accession Countries

The accession countries view the role of solidarity in an enlarged EU on the basis of three fundamental national experiences and lessons from their recent and more distant history.

First, the Central and East European citizens and societies have throughout their history considered themselves as belonging to a European community of shared values, culture and civilisation. Their countries, however, suffered from a division of Europe that was agreed and imposed without respecting the free decision of citizens. The accession countries were involuntarily situated on the wrong side of the iron curtain where they could not participate in the founding of the European Communities. Practising solidarity not only means overcoming this historical discrimination, but can also be seen as the corollary of a fictive initial state of affairs among European countries that decide to form a community of values in the presence of a veil of ignorance as to where Europe would be divided and which countries would be the lucky ones.

Belonging to Europe

Second, the transition to democracy has been a deliberate choice of the overwhelming majority of citizens in Central and Eastern Europe. The EU has been an important external political anchor to the consolidation of democracy since a civic, democratic ethos has been inherently linked to European identity. To facilitate and accompany the rootedness of a democratic political culture in the region, and to reflect citizens' expectations, the EU needs to embody democratic principles. Functioning democratic governance both on the European and the domestic level requires a comparatively high level of mutual commitment among the members of a community. Each of the members, diverse as they may be, should develop a community-oriented responsibility or, more precisely, a certain degree of generalised reciprocity, i.e. that their own actions are not only motivated by the expectation of direct and adequate return.

Democracy, community-orientation, solidarity

Solidarity can be understood as the collective outcome of such community-oriented behaviour, and solidarity is both the precondition for and result of democratic practice. Constructing the EU as a working democratic institution not only presupposes an existing solidarity among member states but will also further accumulate solidarity. The solidarity of a community needs to be based on shared values, norms and mutual confidence, not on a logic of *quid-pro-quo* exchange. The EU should be designed as an institutional arrangement that nurtures this kind of communitarian action and solidarity. Reference points for solidarity are both the Community task of economic and social cohesion and solidarity among member states mentioned in Art. 2 TEC and the social rights stipulated in the Charter of Fundamental Rights.

Whereas solidarity in the Union refers primarily to ties between the nation states, it can acquire an interpersonal meaning if it is seen as one dimension of European citizenship. In so far as the EU evolves into a Union of citizens, there is a basis to develop the solidarity dimension of European citizenship.

The welfare gap in an enlarged EU

Third, there is an enormous welfare gap between Western and Eastern Europe that will persist after enlargement. The citizens of the accession countries experienced how the lagging economic development and the relative poverty of their region have underpinned authoritarianism, state failure, social retardation and violence. They seek membership in the EU to overcome these syndromes and their underlying causes. Although the membership perspective has propelled economic growth in the new member states, and even though enlargement will further boost growth, they will remain poor members for a considerable period of time. Enlargement will thus increase the heterogeneity among the member states, and if this heterogeneity endures, it will undermine the future progress of integration and may pose a long-term threat to political stability in an EU with diverging degrees of integration. The richer member states should base their political and financial solidarity more on these common problems and objectives than on the calculation of immediately materialising benefits or decreasing risks that may be expected from helping neighbouring countries.

Overcoming historic backwardness

As a consequence of enlargement, the economic development of its poor member states will automatically range high on the political agenda of the EU. This economic development is, in its dimension and implications, an unprecedented task since it is about overcoming the historic backwardness of one half of the continent. Among the EU-wide public goods the Union may and is expected to deliver, economic development of the poorer part of Europe has a higher priority compared with, e.g., the task of maintaining incomes in the agricultural sector.

3.2 Key Elements of Solidarity in a Future EU

Viewed from the accession countries, the salience of shared values, community-oriented responsibility and of the persisting East-West gap in development suggest institutionalising solidarity in an enlarged EU through the following three basic elements:

The EU as a developmental community

- The Union should become a *developmental community* that attaches major importance to achieving socio-economic cohesion among its member states. A developmental community may be defined by three features: First, it constitutes a community of member states that share basic values and have strong commonalities, as far as their models of democracy, rule of law and European society are concerned. Second, its members agree on the principle of distributive justice according to which the less well-off member states should be more supported by the community (degressivity). Third, its members agree on a functional pooling of their sovereignties that is increasingly subject to democratic control. The notion of a developmental community suggests that trans-

fers provided by the EU to its members should not be organised in the relationship of hierarchic dependence between donors and beneficiaries that often underlies the support programmes of international development agencies or bilateral assistance frameworks. Payments cannot and should not be exclusively justified with the expectation of equal returns or compensatory side-payments. Rather, the relation between member states should be characterised by equality, solidarity and community-oriented behaviour.

- The *Community method* should be reinforced and strengthened because it is an institutional mechanism that generates solidarity-oriented policy outcomes and filters out the unilateral pursuit of national interests. Qualified majority voting in the Council prompts member states to build coalitions and to define their own interests with reference to more general, European concerns supportable by at least a group of states. The Commission's agency role and its mission as the guardian of the Treaties commit it to respect high standards of neutrality, professionalism and to act in the common EU interest. The latter has often induced it to side with smaller and less powerful states if their policy objectives seemed justified by a major European interest, for example in the enlargement process. The European Parliament provides a public forum to debate and define the priorities and meaning of solidarity in Europe, to legitimise certain policies over others and to scrutinise the work of the Council and Commission. Its majority decisions are, however, balanced with the interests of each member state represented in the Council which acts as a safeguard against a majority disregarding the vital interest of one or a group of member states.
Generating solidarity-oriented policy outcomes
- Solidarity implies a *universalist and inclusive mode of policy-making* that comprises policy formulation and implementation. The EU must include all member states and also the accession countries in the elaboration of new policies and the reform of existing policies. The same rules should be applied to all member states and double standards should be avoided. Enhanced co-operation among member states should be organised in a way that enables the participation of those member states that want to join an initiative but lack the economic capacities.
Inclusion of accession countries

3.3 How to Orient EU Policy-Making Towards Solidarity

Solidarity and its key elements have a wide-ranging meaning for the future new member states in so far as they should shape both the spending policies of the EU and the political-institutional dimension of European integration.

Reforming Spending Policies

The EU embodies the notion of a developmental community and addresses the welfare gap between the rich and the poor parts of Europe mainly by
Economic policy for growth

organising a Single Market without any trade barriers, combined with an effective competition policy and a common external trade policy. The liberalisation of trade most effectively generates economic growth, as shown by the experience of the association period and confirmed by the knowledge of developmental economics. It is the task and responsibility of the future new member states to establish and improve the domestic framework conditions for high and sustainable growth. Hence, the development strategies of the accession countries should mainly rely on sound, liberal macro-economic policy-making and not expect EU transfers to replace it.

While open markets and reliable economic policies are necessary prerequisites of the economic catch-up process, the notion of a developmental community has implications for the existing main spending policies of the EU, the Structural and Cohesion Funds, and the Common Agricultural Policy. To reform and refocus these EU policies, the Group suggests

Make member states responsible

- assigning the prime responsibility for spending EU resources to the member states which should be regarded as equal and responsible members of a community based on democratic principles. The political accountability of member states to the European level should be strengthened since this seems to be a control mechanism suitable to a developmental community. Whether EU resources are spent in accordance with common objectives could be controlled by forms of political accountability together with a macro-economic conditionality. The subsidiarity principle should be taken seriously which implies that the Union should refrain from determining *ex ante* how member states have to implement policies and allocate EU resources among their subnational regions.

Target Structural Funds on less developed states

- considering granting Structural Funds support to states instead of linking it to regions, as is practised with assistance from the Cohesion Fund. The Commission proposal to increase the relative weight of the Cohesion Fund points in this direction. This would strengthen the subsidiarity principle and simplify the management of the Structural Funds by the member states, relieving them of the need to establish administrative capacities at the regional level. Recipient member states could then decide whether they would prefer to spend the resources to remove infrastructural bottlenecks in their national growth poles or to help their lagging regions to catch up. If the given eligibility threshold (75 per cent of EU average GDP per capita) were applied to states instead of regions, development assistance would be more focused since backward regions in states above the threshold would cease to be financed from EU resources. In addition, the Structural Funds should be confined to the support of less developed states (currently classified as objective-1 support and granted to regions). This implies that the Union should abolish the other two objectives, socio-economic change and the modernisation of vocational training. The resources provided for these other objectives should be shifted to the development objective. This streamlining could reduce backflows of contributions and the associated administration costs.

Balance efficacy and solidarity

- maintaining the eligibility criterion for the current objective-1 support, a per-capita GDP of less than 75 per cent of the EU average. This would

imply, as indicated in the Second Cohesion Report of the European Commission, that 27 regions currently supported as objective-1 areas would lose their eligibility, while the share of the eligible population in the total population of the Union would increase from 19 to 26 per cent. This approach attempts to balance the need to focus support in order to achieve efficacy and the concerns of the poorer areas among the current objective-1 areas.

- differentiating the national co-financing rates more widely according to the economic wealth of the respective member states. In accordance with the current financing rules, EU co-financing should not exceed 75% of the project costs (85% in exceptional cases). National co-financing obligations and macro-economic conditionality criteria are important instruments to provide for the efficient and effective use of EU funds. Macro-economic conditionality criteria could ensure that there is a sound fiscal and macro-economic policy facilitating economic growth. **Differentiated co-financing rates**
- increasing the ceiling limiting the inflow of Structural Funds support, if a member state is capable of absorbing inflows of more than four per cent of GDP. The European Commission, in its Second Cohesion Report, has already considered lifting the current 4%-threshold, taking into account the relative poverty of the future new member states and their substantial financing needs. A flexible application of the threshold reflects the normative principle of distributive justice since it would enable the Community to help its poorest members more than its less poor members. In addition, EU resources spent in poorer member states have a higher marginal effect on allocation and are thus also rational from an overall economic point of view. The absorption capacity of the future new member states can be significantly raised by lowering national co-financing rates and by supporting the reform of public administration and the enhancement of domestic legal standards and financial/legal control arrangements. **Flexible absorption capacity threshold**
- improving the incentive structure for recipient governments by linking a part of the Structural Funds transfers to performance in the implementation of development programmes. However, this management tool should be used to improve organisational learning, not to abandon solidarity in favour of competition.
- not to establish a horizontal transfer scheme among the member states that channels money directly from the richer to the poorer members. Such a scheme may be more transparent, simpler and cheaper, but it would threaten solidarity because (1) it would associate EU assistance with state-to-state transfers, resulting in a nationalisation of political control, including the likely mobilisation of national populist resentment, (2) it would lead to deliberating and defining EU-wide goals intergovernmentally and not within the common EU institutions depriving them of a crucial function, and (3) the logic of state-to-state transfers implies that member states might opt out, thus leading to an erosion of solidarity. **No direct state-to-state transfers**

- preventing an unfair competition by richer member states subsidising their backward regions to an extent that neutralises the allocative effect of EU support in poorer member states. To achieve this aim, state aids should continue to be regulated in accordance with the provisions of the Treaty.
- Continuous reform of the CAP**
- continuing reform of the Common Agricultural Policy (CAP). The rural development expenditures that have been a part of the CAP should be integrated into the Structural Funds. This would imply that recipient member states could decide whether to spend resources on rural development or for other development objectives. The remaining CAP spending should be focused on modernising the agricultural sector. In the context of a broad public discussion on the function of a modern CAP, one should consider whether resources from the CAP can be shifted to other public tasks the EU is expected to perform.

Institutional and Political Dimensions of Solidarity

- Solidarity as a general principle**
- The Group argues that solidarity in the EU has a relevance beyond its policy and transfer dimension. Thus, it suggests, firstly, to institutionalise solidarity as a *general principle* to assess the tasks and responsibilities of the EU, similar to the subsidiarity principle or the obligation to support the Community (Art. 5, 10 TEC). This principle should be taken into account in particular if the delimitation of competences is debated in the context of the post-Nice process. The need for a clarification of competences and power sharing between the Union and the member states should not serve as a pretext for re-nationalising current EU policies and scaling back the solidarity dimension they might have. The Common Agricultural Policy and the cohesion policy should not be re-nationalised as such, but critically evaluated and reformed according to the more detailed proposals outlined below.
- Budgetary autonomy for the EU**
- Second, it follows from the notion of the EU as a democratic polity (see 1.2) that the Union should retain its own budget and a substantial degree of *budgetary autonomy* in the sense that its institutions should be able to autonomously decide on the purposes for which the EU uses the revenues received from its member states and citizens. Allocations must be based on rules that apply to all member states and beneficiaries, not on the bargaining powers of member states or sectoral lobbies. The fairest principle of *burden sharing* in a community of states is that member states contribute to the financing of the EU according to their economic capacity, expressed in their Gross National Product (GNP). Thus the share of each member state in financing the budget of the EU should be closely aligned with this member state's share in the GNP of the Union.
- Defining a public policy for the EU**
- Third, the EU should scrutinise its current activities as to whether they serve *public purposes with a European dimension* and are best undertaken by the Union. This concerns the Common Agricultural Policy and the Structural Funds in particular, since they constitute the main spending items and are frequently criticised for their lack of efficacy. In addition, it should be considered whether the EU can effectively perform the public functions the

member states are increasingly failing to deliver under the pressure of globally integrating markets that have eroded the fiscal and regulatory capacity of nation states. What constitutes a public good and which public policies should be pursued by the Union is defined in the Treaty and should be deliberated and decided by the EU institutions. The Group considers that effective conflict prevention in Europe, the reduction of social and economic disparities in Europe and the effective representation of European interests in global regimes figure prominently among these public goods. Spending for those budget lines that aim at the production of EU-wide public goods should be maintained, and the structure of spending should be more aligned with the objectives and responsibilities stipulated in the current Treaty (Articles 2 and 3 TEC) or in the envisaged Constitutional Treaty.

Fourth, the enlarged EU should continue to support all European states that aspire to become members and want to adopt the values and norms of the Union. The future member states advocate a strong *solidarity with applicant states* that aspire to join the EU since (1) these states are situated in their neighbourhood and their economic progress and political stability affects the new member states directly, (2) the experience with the accession process has shown that substantial external assistance is very important for a country trying to fulfil the requirements of membership, and (3) the very act of enlargement has symbolised and reinforced the open understanding of communitarian action, i.e. that the Union and its member states take a responsibility for and consider the interests of EU neighbours. This norm should continue to guide the future policy of the EU and its members. If future accessions require the prior adoption of costly community legislation, there is a clear need to grant more support prior to accession.

Solidarity with applicant countries

3.4 Potential for Enhanced Co-operation

Enhanced or closer co-operation, perceived as the most recent demonstration of differentiated integration within the EU, is commonly regarded as a de-solidarising factor. However, the relevant treaty provisions agreed on at Nice indicate a non-negligible potential for managing diversity in the enlarged Union without making substantial assaults on solidarity to the detriment of the current accession countries:

- At Nice the current member states that are willing and able to initiate deeper integration efforts resisted the temptation to create new mechanisms for enhanced co-operation outside the EU system (a European federation, a 'treaty-within-the-treaty'). Instead, they developed the Amsterdam differentiation tools towards greater operability while calibrating them to fit the architecture of a wider Union.
- Openness was confirmed as a guiding principle of implementing the provisions on closer co-operation to reassure EU members that do not take part in an 'enhanced' initiative at the start.

Resisting closer co-operation outside the EU system

Openness as a principle

Potential for alternating leadership

- The possibility of triggering different closer co-operations increases the potential to involve different member states as alternating leaders in the integration process depending on policy fields and thus reduces the fears of future member states about the formation of static circles dividing centre from periphery in an enlarged EU.

Avoiding blockages – facilitating dynamism and inclusiveness

- By offering a flexible instrument for accommodating the interests of pro-integrationist member states, enhanced co-operation can diminish the negative effects of eventual blockages of classical decision-making procedures in an enlarged EU. Maintaining the dynamic character of European integration at its most advanced levels helps to increase the prospects of enlargement as a long-term process – both before and, more importantly, after the first wave of entrants – by dissuading resistance to it on grounds of efficiency. In sum, dynamism of integration among its oldest actors facilitates dynamism and inclusiveness among its newest participants.

Enhanced Co-operation after Nice

Future member states and the continuation of the integration process

The main reason for a revision of the original Amsterdam provisions concerning closer co-operation in the IGC 2000 was grounded in the worries that enlarging the EU to 27 or more members could block future attempts to intensify integration in certain policy areas. However, the classic enlargement-related rationale behind enhanced co-operation – that the future member states of a wider EU could impede all attempts at deepening integration – is a vision (or a nightmare) that is not justified. The communist past, suggesting fragility of democracy and a considerably lower level of prosperity, is by no means the only determinant of attitudes and integrative behaviour. True, re-distributive policies might be a case for a solid Central- and East European coalition in an enlarged EU. But, other factors will also have an impact on the type of member each current candidate will become – historic experience in integration, state building, nationhood or identity building. Taking these factors into account would offer a more diversified picture of possible alliances and would hint that a ‘post-communist bloc’ inside the future EU is not to be feared. Decisions in the Council of an enlarged European Union will not be taken on the basis of coalitions of the ‘new’ against the ‘old’ or of the ‘small’ against the ‘big’ states, but rather on the grounds of interests as perceived by the individual member states.

The same is true with respect to a further deepening of the integration process. It is wrong to assume that the new member states will necessarily oppose a further deepening. Thus, a reform of the flexibility instrument of closer co-operation at Nice was not necessary because the accession countries will be less enthusiastic about the continuation of the integration process than the average current member state – but because in a wider and more heterogeneous Union further differentiation by enhanced co-operation will become inevitable, if the enlarged EU does not want to move at the pace of its slowest or most reluctant member state – new or old.

The Treaty of Nice, in an attempt to make the procedure more operational and practicable, (1) removed the 'emergency brake' of requiring unanimity in Pillars One and Three; (2) introduced enhanced co-operation in the area of CFSP, although every member state has the right to veto an initiative; (3) fixed the minimum number of initiating states at eight thereby lowering the threshold in an enlarged EU of 27 member states down to under one third; and (4) established a procedure for latecomers to join a closer co-operation at a later stage.

Nice reforms

Accession countries have been concerned that a higher degree of differentiation by means of enhanced co-operation might result in a second or even third class membership. EU membership would have little substance in reality at the moment of accession if a new formation gathered the current Union members more tightly. The results of Nice on closer co-operation can reassure the applicants that they will not remain forgotten in the periphery of the European construction. The existing degree of differentiation will not increase dramatically. Enhanced co-operation is not suitable for incepting new areas of integration, since it can be applied only to sectors already incorporated in the Treaties and does not cover areas falling within the exclusive powers of the Union. Nothing comparable to e.g. EMU, where the accession states will not be able to participate from the beginning of their EU-membership, will be established by means of the flexibility tool. Moreover, the post-Nice version of enhanced co-operation cannot function as a tool to form an 'avantgarde', a 'centre of gravity' or a 'pioneer group'. It could be used as a stick to disobedient and veto-conducive countries, rather than a carrot to the enthusiasts of deeper integration.

Concerns of second or third class membership

Closer co-operation will not lead to more of a core, but rather be an instrument to improve political shaping in detail. The flexibility provisions can be expected to be applied in the case of individual legislative acts and not in entire policy fields. Enhanced co-operation seems most relevant for those areas which after Nice still remain subject to the unanimity rule. This form of flexibility seems applicable in particular in policy fields such as environment, taxation, social policy or justice and home affairs. The mechanism may provide for some possibilities for 'micro-co-operation' with regard to one or a set of specific directives, thereby improving micro-flexibility without, however, causing new major qualitative gaps between old and new member states.

Improving micro-flexibility

Solidarity Between 'Insiders' and 'Outsiders'

The principle of solidarity between 'insiders' and 'outsiders' is perhaps the most relevant for ensuring that closer co-operation has the potential of becoming a 'quality product'. Solidarity in this respect requires (1) the continuous openness of those fields subject to a higher degree of differentiation and (2) the provision of solidarity mechanisms to 'outsiders' enabling them to catch up and join a group of countries subject to an enhanced co-operation.

First, the commitment to openness, merely claimed in Amsterdam, was made operational in Nice, enabling latecomers to join an initiative. The

Principle of openness

Commission, which has to ensure that as many member states as possible are encouraged to participate in a closer co-operation, has been given a prominent role with respect to the openness to outsiders especially concerning the First Pillar. In case any other member wants to join a flexibility initiative, it is the Commission which will take a decision on its participation. Enhanced co-operation “is aimed at furthering the objectives of the Union”, which favours an interpretation of the concept as a process, rather than a fixed setting. The supranational institutions interested in the re-establishment of the homogeneity of the legal space (Commission, European Court of Justice) as well as the non-participating member states will tend to emphasise the temporary character of the initiative. With regard to the Community Pillar, the *acquis* and exclusive competences restriction sound reassuring, although the true force of this protection tool will have to be tested in practice. However, the possibilities for offering protection to non-participants are not operationally precise on two essential requirements – that the *acquis* and policies governed under exclusive community competences must remain intact, and that the rights of those outside the initiative are not affected. The decision on whether or not these criteria are fulfilled might be politically subjective and might need the pronouncement of the European Court of Justice.

Providing resources to 'outsiders'

Second, in spite of the fact that the principle of openness was made operational, the chances for the ‘outs’ to catch up and join the closer co-operation team diminish in the absence of solidarity mechanisms, especially transfers of resources. Once enhanced co-operation is triggered, it will be difficult to negotiate catching up, so the key moment to strike a solidarity bargain is when the procedure is initiated. The role of the European Parliament and the Commission as ‘defenders of the faith’ of the whole EU should not be omitted in this context. A possible decision to fund a flexibility initiative with EU money (Art. 44a/TEU) constitutes a budgetary decision and should be taken by the budgetary authority (EP, Council) with the mediation of the Commission. That is how the latter can propose and the former can endorse the allocation of financial resources to avoid the appearance and increase of a policy gap between participants and non-participants in a closer co-operation.

An Extra-EU Dimension of Flexibility

'Wider'-closer co-operation

Adapting to the needs of an enlarged EU to intensively reach out to those states still outside the Union is a sound reason for considering the external dimension of the concept of flexibility. Enhanced co-operation should not be restricted only to achieving a higher degree of differentiation among EU member states. Instead, ‘wider-closer’ co-operation could be the means to bring countries (still) outside the EU closer to the Union, thereby opening ways for an extra-EU dimension of the concept of differentiation. The possibility for states that are not (yet) members of the EU to participate in a certain policy field could help the countries not interested in becoming EU members or those who do not yet qualify for membership to be more involved in pan-European policy development. That is how Norway and Iceland are already parties to the Schengen Agreement. Following the next

rounds of enlargement and an adequate reform of the provisions governing differentiation, ‘wider-closer’ co-operation can be a practicable instrument for those applicant countries then still outside the Union (e.g. countries of the Western Balkans). As a substitute for full membership or as a long-term pre-accession strategy one could have applied the instrument of ‘wider-closer’ co-operation to CFSP, e.g. in the case of Turkey or to the field of Justice and Home Affairs, e.g. in the case of Ukraine.

Following the general logic of the flexibility instrument, ‘wider-closer’ co-operation in its external dimension can be applied mostly at a ‘micro’ level – with regard to specific legal or political acts. In this respect, the EU member states launching a flexibility initiative should involve external actors at the stage of decision-implementation (by accepting them in the work of various implementation agencies, – e.g. Europol) and/or at the stage of decision-shaping (by offering them the right of a ‘voice’ via consultation mechanisms of a different intensity), while not disclosing decision-making per se (right of ‘vote’).

‘Wider-closer’ co-operation at the micro-level

Whatever the potential positive effects of ‘wider closer’ co-operation, the extra-EU dimension of flexibility will be difficult to apply in practice, because of the increasingly complex and cumbersome decision-making that will inevitably come along. Moreover, three other factors might reduce the chances to formalise ‘wider-closer’ co-operation:

Problems of ‘wider-closer’ co-operation

- The relative weight of the Union compared to the relative ‘weakness’ of a single non-EU country, might negatively affect the latter’s willingness to engage in the specific field where the initiative is being considered.
- The (immediate or distant) prospect of the ‘third country’ becoming a member of the EU might reduce the attractiveness of engaging in a certain ‘wider-closer’ co-operation – a point which has previously made it difficult to give flesh to various ideas of ‘affiliated’ or partial EU membership.
- Initiatives in the fields of CFSP or JHA will have to cope with the problem of *the external legitimacy of the EU*. The challenge will be to choose the most appropriate format for the Union to take action or to conduct a policy, which will be not just effective but also perceived as legitimate both internally, by the member states, and externally, by third parties, often the very objects of such an action or policy.

Revising Enhanced Co-operation at the Next IGC

The Group holds that a dynamic and *communautaire* understanding and implementation of the concept of closer co-operation has the potential of bringing dynamism in the development of the whole EU. It can project this dynamism outwards and offer the opportunity for a dynamic involvement in the integration process also of its newest actors – the current accession states. For this reason and since treaty restrictions do remain, it is also in the interest of future member states to use the opportunity of the next

Intergovernmental Conference to change the Nice provisions, aiming to abolish the remaining restrictions, thus providing the grounds for a higher degree of differentiation if some hesitant member states – old or new – hamper further integrationist attempts. In concrete terms,

- the instrument of flexibility should apply also to policy-fields not covered by the Treaties;
- enhanced co-operation in the area of CFSP should not remain subject to a possible veto from one or more member states;
- closer co-operation should also relate to matters having military or defence implications;
- when resorting to flexibility at the micro level, the member states and mostly the Commission and the ECJ should aim to strike the right balance between attempts at deepening integration and efforts to preserve a homogenous legal space. The problem of the eventual emergence of a policy gap between the ‘ins’ and ‘outs’ of an ‘enhanced’ initiative due to lack of resources should be offered a truly communitarian solution by means of Art. 44a (TEU), as proposed above.

From the Convention to Ratification – Involving Future Member States

The debate on the future development of the European Union through the next Intergovernmental Conference is divided into three parallel processes. The first process which officially commenced in March 2001 is about an open exchange of views and a wide-ranging debate in both the EU-15 and the candidate countries on the future reform of the EU. A preparatory process based on the terms and modalities defined by the EU-15 will run in parallel with the public debate and precede the next IGC. The Intergovernmental Conference will take the final decisions concerning any changes to the treaties. However, the IGC should mark the culmination of the preparatory process and reflect the outcome of the public debate.

Elements of the reform process

This next effort to reform the Union, which will substantially change the EU, should not be an exclusive exercise of the EU-15, but involve also the accession countries. The applicants are no longer content with their role as 'associated outsiders'. To be merely informed about the internal EU reform process is no longer sufficient. The participation of the future new member states will further legitimise the outcome of the process. In their Nice declaration on the future of the EU the Heads of State and Government paid tribute to the need to involve the accession countries and the EU-15 have since then defined more concretely the terms of the accession countries' participation.

Public Debate

In the initial phase of the open debate on the future development of the EU the applicants have already become actively involved. A debate seems necessary, since there has not yet been a broad public discussion on the future of the integration process in the accession countries. The EU-debate concentrated instead on the costs and benefits of a future membership. The positive public opinion and attitude towards the EU has decreased. Upcoming reforms of the Union do however also precondition the approval of the people in the future member states. Early participation of the public in the accession countries concerning the debate on the future architecture of the Union seems necessary and to some extent even more appropriate than the discussions on the technical details of the accession negotiations to generate approval for the common 'European project'.

Participation of the public in the accession countries

Both the accession countries and the current member states face the problem of how to raise public awareness and to initiate a wide-spread debate, while citizens in general increasingly abstain from any kind of political discourse. In order to avoid any artificial discussions on the Union's future, which do not really attract the wider public's attention, governments and parliaments in the accession states and the EU-15 need to 'Europeanise' their respective national debates. Citizens will actively participate in a debate only if they

are convinced that their participation will make a difference from which they will benefit. For this reason, the EU must include the accession countries in the reform process. They need to participate not only in the public debate, which should continue for the entire duration of the reform process, but also in the concrete preparatory work in view of the next IGC.

Preparatory Process

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| Deficits of IGC procedure | The method for preparing the next IGC determines the framework for any proposals concerning the participation of the accession countries. The inter-governmental model seems no longer suitable to tackle the next revision of the Treaties. The sub-optimal course and outcome of the IGC 2000 have highlighted the obvious deficiencies of the traditional method for reform based solely on diplomatic procedures. The next IGC cannot merely repeat the arrangement of the previous conferences, but rather finalise the ground-work carried out by a structured novel procedure. |
| Convention method | The decision to engage a Convention similar to the one which worked out the Charter of Fundamental Rights is the appropriate method for preparing the next IGC. It reflects the need for more democratic legitimacy and a higher degree of transparency and efficiency. The Convention must functionally link the wider public debate and the Intergovernmental Conference. The treaty reform proposals, recommendations and options worked out by the Convention must be based on the outcome of an extensive public discussion in both the current and future EU member states and serve as a basis for the work of the forthcoming IGC. |
| Participation in the Convention | The EU-15 have granted the applicant countries an observer status in the Convention. Each applicant country will enjoy the right to be represented by two members of their respective parliaments and one government representative. This decision does not coincide with the viewpoint of future member states, who argue that given that the Convention will not play a decision-taking role but rather function as a preparatory body, the representatives of the accession countries should, right from the beginning, participate as full and equal members of the Convention. From their perspective, full participation would be the most efficient means to stimulate the domestic debate on 'Europe' and encourage much wider participation by civil society in the accession states. Mere observer status in the Convention might rather be the source of further disappointment and would be directly linked to an underlying scepticism about the whole process of enlargement. As a consequence, the accession countries might lose their true interest in the debate on the grounds of their perception that their views and positions in deliberations will not be taken seriously. On the other hand, from the perspective of EU member states, full participation of the accession states might weaken the authoritative nature of the Convention's proposals. In their line of reasoning, a clear distinction should be made between EU members and non-members. Thus, the accession states should become full-fledged members of the Convention only after accession negotiations have been concluded. |
| Mandate and agenda | The Convention must be given a broad but precise mandate in terms of the aims pursued and the topics to be discussed. The agenda will have to in- |

clude not only the four issues on the post-Nice agenda but also other pressing institutional concerns, a number of which have been presented in this paper. The details of the agenda must be subject to an autonomous decision of the Convention itself. The accession countries should have the opportunity to express their views on which topics should be included in the deliberations of the Convention.

The EU-15 have decided that the Convention should commence its proceedings in the first half of 2002 and conclude its preparatory work within one year. The Villa Faber Group holds that due to the significance of a next reform as part of an overall constitutional process, the outcome of the effort to reform the EU must have priority over the rigidity of any time table. If necessary, a reasonable delay should be preferred to a sub-optimal outcome and yet another IGC fairly soon afterwards.

Timetable

Taking into account the principle of the Convention's independence, the working methods must be decided by the body itself. The procedures must be characterised by a high degree of transparency, including public hearings and the structural involvement of civil society.

Working methods

The European Union has decided to install a *Praesidium* including seven members. Among them the President of the Convention, three representatives of the Troika and one representative from the Commission, the European Parliament and the national parliaments. The Group holds that the representatives of the accession countries should also enjoy the right to choose among themselves a member of the *Praesidium*.

Participation in the Praesidium

The Convention must from the outset of its preparatory work decide on the decision-making procedure. Most importantly, the Convention must avoid formulating proposals on the lowest common denominator. In case of unbridgeable diverging views, the Convention should as a last resort formulate alternative options in their final conclusions, stating, however, the majority's preference.

Quality of results

Intergovernmental Conference and Ratification of the New Treaty

In contrast to the previous procedure, the next Intergovernmental Conference must decide on treaty changes on the grounds of the outcome of the Convention and the results of a wider debate on 'Europe' in both the current and future EU member states. The technical proceedings of the actual IGC should in principle follow the old pattern of intergovernmental conferences. However, the members of the *Praesidium*, including the representative of the accession countries, should participate in the negotiations.

IGC proceedings

With regard to the next IGC, the EU-15 have already declared that those applicant states which have concluded EU accession negotiations will be invited to participate, without specifying the terms of their participation, which should anyhow be based on the principle of equality. Those candidate states which have not concluded their negotiations will be invited as observers.

Participation in the IGC

Following the conclusion of the next IGC referenda should be held simultaneously in those member states which have a national tradition of holding

Timing and procedure of ratification

referenda. In those countries which have no tradition of holding referenda, the national parliament's sole decision-making powers must be respected. Moreover, one could give thought to the idea of holding the national referenda and the ratification vote in national parliaments at approximately the same time. This would enable a common forum for public debate to take shape throughout Europe, in which the European public would be able to discuss their shared future together at the same time. Furthermore, the Group suggests that in the long term consideration be given to the design of mechanisms that help create a European-wide demos, such as actual cross-border elections, through direct or indirect/representative voting procedures.

**Conformity with the
outcome of the IGC**

The ratification process is indispensable but also fragile, since individual member states can arrive at a dissenting vote and thus question the compromises arduously negotiated between the member states. While it should be clear that no member state is obliged to conform, dissenting states cannot have veto power and harm the integration process durably. Therefore the Group suggests that there should be mechanisms designed to attach specific costs to the repeated rejection of a new treaty. In addition, constructive mechanisms should be created to accommodate the concerns of dissenters.

The Constitutional Treaty should come into force by 2007 – a date that would mark half a century of European integration originating with the Treaties of Rome. This deadline would, moreover, enable those accession countries that will have joined by then to shape the future of Europe as full and equal members. As the EU reform process determines not only the rules of inter-state co-operation within the Union but also the future ability of all member states, including new members, to shape these rules of play, it is ultimately a question of legitimacy to involve the accession countries.

Villa Faber Group on the Future of the EU

October 2001

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Acknowledgements

The Villa Faber Group on the future of the EU would like to gratefully acknowledge the support of Stephen Calleya who gave us the opportunity to hold one of our most stimulating working meetings in Malta's Mediterranean ambience. Particular thanks go to Krassimir Nikolov and Tamás Szemplér who invested additional energy and time to scrutinise an early version of the paper together with the drafters. The Group is also grateful to Elisabeth Huhmann and Christina Marpe at the Bertelsmann Foundation for their superb organisational work, to Alexander Wulffius for his assistance at the CAP and to Douglas Merrill for carefully proofing the final report.