

Article 10: Categories of competence

1. When the Constitution confers on the Union exclusive competence in a specific area, **the Member States may only act where they have been authorised to do so in accordance with the applicable Union procedures.**
2. When the Constitution confers on the Union a competence shared with the Member States in a specific area, **the Member States are entitled to act with regard to a certain matter until the Union has acted in respect thereof. When the Union has acted in respect of a certain matter, the Member States shall respect the obligations imposed on them by the relevant Union measures.**
3. **[paragraph 3 deleted]**
4. The Union shall have competence to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.
5. In certain areas and in the conditions laid down in the Constitution, the Union shall have competence to carry out actions to coordinate, supplement or support the actions of the Member States. **In such areas, except in respect of matters which shall be identified specifically in the applicable legal basis, action by the Union shall not entail the use of instruments having direct applicability or leading to the harmonisation of the laws of Member States.**
6. The Union shall exercise its competences to implement the policies defined in Part Two of the Constitution in accordance with the provisions specific to each area which are there set out.

Commentary:

For the sake of clarity, this provision should bring together all the elements necessary for the defining of the three categories of Union competence some of which are currently scattered around in

Praesidium's draft Articles 11-15. (Thus, the definition of the categories of competence would be kept separate from the question of allocating the various substantive policy areas to each competence category.) The above definitions are intended to bring the definitions of the categories closer to the established case law of the Court of Justice and the recommendations of the working group on complementary competence.

For reasons of consistency and clarity, the overarching aim of the reform should be to place all areas of Union action – with the exception of common foreign and security policy - in the three basic categories of competence. As no sufficient grounds have been put forward for the introduction of a separate provision on the coordination of economic policies, the proposed para. 3 ought to be deleted.

As regards the areas for supporting action, in particular, there should also be a possibility, in matters identified in the relevant provisions of Part Two, to adopt of measures having direct applicability or entailing harmonisation of the Member States' laws or regulations.