

AMENDMENT FORM

Suggestion for amendment of Article 12 Part I of the Constitution

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Status : **Tiilikainen, Kiljunen, Vilén- Members**
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Article I-12: Exclusive competence

1. The Union shall have exclusive competence to establish competition rules within the internal market, and in the following areas:
 - monetary policy, for the Member States which have adopted the euro,
 - common commercial policy,
 - customs union,
 - the conservation of marine biological resources under the common fisheries policy.
 2. The Union shall have exclusive competence for the conclusion of an international agreement ~~when its conclusion is provided for in a legislative act of the Union, is necessary to enable the Union to exercise its competence internally, or affects an internal Union act~~ **insofar as the conclusion of the agreement could affect an act adopted by the Union; when the Union has in a legislative act expressly conferred on its institutions powers to negotiate with non-member countries or international organisations; or when internal competence of the Union can only be effectively exercised at the same time as external powers.**
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Explanation (if any) :

Unlike the Praesidium, we do not think draft Article I-12, paragraph 2 “faithfully reflects the Court of Justice case-law.” Our main concern is the provision whereby the Union would have exclusive competence for the conclusion of an international agreement “when its conclusion ... affected an internal Union act”, seemingly intended to codify an aspect of the Court’s so-called “AETR” doctrine. Under the said doctrine, however, the Union (at present, the Community) does not acquire exclusive competence for the conclusion of an internal agreement whenever there is an internal Union act that might be affected by the conclusion of the agreement. As the Court of Justice has confirmed on several occasions, the Union’s exclusive external competence arises “[o]nly in so far as common rules have been established at internal level” (Opinion 1/94 [1994] ECR I-5267, para. 77, emphasis added). In other words, for the rest of the given agreement, the Union’s competence, if any, remains non-exclusive and it is open to the Member States, should they so decide, to participate in the conclusion thereof. Accordingly, we

think that the AETR aspect of Article I-12, paragraph 2, should be rephrased to better reflect the current state of the case law. Alternatively, the matter should be left for case law.

As regards the other two situations covered by paragraph 2 of the draft Article, our suggestions for amendment are mainly of style, intended, again, to take more accurate account of the Court's case law (see., e.g., Opinion 1/94 , paras. 89 and 95).