

AMENDMENT FORM

Suggestion for amendment of Article : 11

By Mr : František Kroupa

Status : Alternate

I very support the proposals by Mr. E. Brok involved in his contribution CONV 541/03 pages 7 – 8 for the determination of the sphere of exclusive competences. I propose to insert these list of competences into Article 11.

Explanation (if any) :

FICHE AMENDEMENT

Proposition d'amendement à l'Article 12

Déposée par Monsieur : Alain Lamassoure

Qualité : - Membre

Article I-12 : Les compétences exclusives

1. L'Union dispose d'une compétence exclusive pour établir les règles de concurrence au sein du marché intérieur, ainsi que dans les domaines suivants :
 - la politique monétaire pour les États membres qui ont adopté l'euro,
 - la politique commerciale commune,
 - l'Union douanière,
 - la conservation des ressources biologiques de la mer dans le cadre de la politique commune de la pêche.

2. L'Union dispose d'une compétence exclusive pour la conclusion d'un accord international **dans les domaines qui relèvent de ses compétences internes ou** lorsque cette conclusion est prévue dans un acte législatif de l'Union.

Explication: *Explication. La rédaction actuelle n'est pas claire pour un non-initié. Elle paraît trop restrictive dans le champ de compétences propres de l'Union, et, au contraire, trop large par la formule relative à "l'affectation d'un acte interne de l'Union". Il faut lier clairement compétence interne et externe, les États membres restant compétents pour les accords internationaux relevant de leur champ de compétence.*

AMENDMENT FORM

Suggestion for amendment of Article : I-12

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status : - Member - ~~Alternate~~

Artikel I-12: Ausschließliche Zuständigkeiten

(1) Die Union hat ausschließliche Zuständigkeit ~~für die Festlegung der Wettbewerbsregeln im Binnenmarkt sowie~~ in folgenden Bereichen:

- die Geld- und Währungspolitik der Mitgliedstaaten, die den Euro eingeführt haben,
- die gemeinsame Handelspolitik, *einschließlich des gemeinsamen Außenzolls*,
~~— die Zollunion,~~
- die Erhaltung der biologischen Meeresschätze im Rahmen der gemeinsamen Fischereipolitik.

(2) Die Union hat ausschließliche Zuständigkeit für den Abschluss internationaler Übereinkommen, wenn ein solcher Abschluss in einem Rechtsakt der Union vorgesehen ist, er notwendig ist, damit die Union ihre Zuständigkeit auf interner Ebene ausüben kann oder er eine interne Handlung der Union berührt.

Explanation (if any) :

Nach der Rechtsprechung des Gerichtshofs ist neben dem Wettbewerbsrecht der Gemeinschaft das nationale Wettbewerbsrecht weiterhin grundsätzlich parallel anwendbar (vgl. Rs. 14/68, Slg. 1969, 1, Rn. 3 f.; verb. Rs. 253/78 und 1-3/79, Slg. 1980, 2327, Rn. 15). Es handelt sich also keinesfalls um eine ausschließliche Zuständigkeit, sondern um eine Sonderkategorie der geteilten Zuständigkeit wie die Bereiche der Artikel I-13 Absatz 3 und 4.

Die Zollunion umfaßt das Verbot von Binnenzöllen und den Gemeinsamen Außenzoll. Das Verbot von Binnenzöllen stellt keine Zuständigkeitszuweisung dar. Die Regelung des Außenzolls ist dagegen ein besonderer Teil der gemeinsamen Handelspolitik und sollte wie diese klar erkennbar in das Gesamtkonzept des außenpolitischen Handelns der Union eingeordnet werden.

AMENDMENT FORM

Title III: Union Competences

Suggestion for amendment of Article : Article I-12: Exclusive competence

By Members: Mr Andrew Duff.

Transpose this article with Article I-13 (shared competences) and renumber accordingly.

Explanation:

See explanation to Amendment to Article 11.

FICHE AMENDEMENT

Proposition d'amendement à l'Article I-12

Déposée par Monsieur de Villepin

Qualité : - Membre

Article I-12 : Les compétences exclusives

1. L'Union dispose d'une compétence exclusive pour établir les règles de concurrence au sein du marché intérieur, ainsi que dans les domaines suivants :
 - la politique monétaire pour les États membres qui ont adopté l'euro,
 - la politique commerciale commune, **à l'exception des accords dans le domaine du commerce des services culturels et audiovisuels, des services d'éducation, des services sociaux et de santé humaine, ainsi que dans le domaine de l'investissement, selon les modalités définies par la troisième partie de la présente Constitution ;**
 - l'Union douanière,
 - la conservation des ressources biologiques de la mer dans le cadre de la politique commune de la pêche.
2. L'Union dispose d'une compétence exclusive pour la conclusion d'un accord international lorsque cette conclusion est prévue dans un acte législatif de l'Union, qu'elle est nécessaire pour permettre à l'Union d'exercer sa compétence au niveau interne, ou qu'elle affecte un acte interne de l'Union.

Explication éventuelle :

Paragraphe 1 : Les autorités françaises accordent la plus haute importance à cet amendement concernant la politique commerciale commune, afin d'exclure de manière certaine les services culturels et audiovisuels, éducatifs, sociaux, de santé humaine, et dans le domaine de l'investissement de la compétence exclusive de l'Union.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : I - 12

Déposée par Madame ou Monsieur : Représentants de l'Assemblée de la République - Portugal

- **Membre:** Maria Eduarda Azevedo, Alberto Costa

- **Suppléant:** António Nazaré Pereira, Guilherme d'Oliveira Martins

Article I- 12

Les compétences exclusives

1. L'Union dispose d'une compétence exclusive pour assurer, **au sein du marché intérieur**, la libre circulation des personnes, marchandises, services et capitaux et une concurrence **non faussée**, ainsi que dans les domaines suivants:

-
-
- **la politique agricole commune**
- **la politique commune de la pêche**

Explication éventuelle : Cette proposition a pour conséquence l'annulation du point "l'agriculture et la pêche" de l'article 13.

Suggestion for amendment of Article I-12, Paragraph 1 4th indent

By Mr : MacCormick, Neil

Status : - Alternate

Delete this indent, that is, delete the words indicated:

The Union shall have exclusive competence ... in the following areas :

- ...
 - ...
 - ...
 - ~~the conservation of marine biological resources under the common fisheries policy~~ |
-

Explanation

This is, in effect, a re-tabling of an earlier amendment.

At the moment, the powers of the Community (in future, “the Union”) over marine resource conservation depend on secondary law, currently Regulation 2371/2002, of which Article 1(1) states the scope of the common fisheries policy with reference to the ‘conservation, management, and exploitation of living aquatic resources ...’

The Treaty provisions concerning fisheries are quite skeletal, being found only in present Article 32 (1), which is restated as Article III-116 of the present Draft. This has the effect of tacking ‘fisheries’ on to agriculture.

There is at present a strong current of opinion that there needs to be a much greater decentralisation of the governance of fisheries and marine resources. Whether this view will prevail or not, it would be totally unacceptable to entrench a part of the present Regulation by creating an exclusive competence that could in turn be changed only by a Constitutional amendment.

The claim that this matter is at present one of exclusive competence is not to the issue. The question is: ‘Shall this become **constitutional** exclusiveness? Shall it be entrenched, rather than left subject to the ordinary legislative process?’ No case has at any time been made for this. What is proposed lacks any warrant in the current treaties, and is a change blatantly introduced with no serious discussion, in a Convention where only a minority of members represents any significant interest in or experience of fisheries. This, be it noted, is a state of affairs that will become the more common the more landlocked Member States the Union welcomes to its membership.

~~the conservation of marine biological resources under the common fisheries policy~~ |

AMENDMENT FORM

Suggestion for amendment of Article 12 Part I of the Constitution

By: Teija Tiilikainen, Antti Peltomäki, Kimmo Kiljunen, Jari Vilén, Hannu Takkula and Esko Helle

Status : **Tiilikainen, Kiljunen, Vilén- Members**
 Peltomäki, Takkula and Helle - Alternates

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.**
-

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).

FICHE AMENDEMENT

Proposition d'amendement à l'Article:

I-12

Déposée par Monsieur:

Erwin Teufel

Qualité:

Membre

Texte du Praesidium

- (1) Die Union hat ausschließliche Zuständigkeit für die Festlegung der Wettbewerbsregeln im Binnenmarkt sowie in folgenden Bereichen:
- die Geld- und Währungspolitik der Mitgliedstaaten, die den Euro eingeführt haben,
 - die gemeinsame Handelspolitik,
 - die Zollunion,
 - die Erhaltung der biologischen Meeresschätze im Rahmen der gemeinsamen Fischereipolitik.

- (2) Die Union hat ausschließliche Zuständigkeit für den Abschluss internationaler Übereinkommen, wenn ein solcher Abschluss in einem Rechtsakt der Union vorgesehen ist, er notwendig ist, damit die Union ihre Zuständigkeit auf interner Ebene ausüben kann oder er eine interne Handlung der Union berührt.

Amendement proposé

- (1) Die Union hat ausschließliche Zuständigkeit für die Festlegung **ihrer** Wettbewerbsregeln im Binnenmarkt sowie in folgenden Bereichen:
- die Geld- und Währungspolitik der Mitgliedstaaten, die den Euro eingeführt haben,
 - die gemeinsame Handelspolitik,
 - die Zollunion,
 - die Erhaltung der biologischen Meeresschätze im Rahmen der gemeinsamen Fischereipolitik.

- (2) Die Union hat ausschließliche Zuständigkeit für den Abschluss internationaler Übereinkommen, wenn ein solcher Abschluss in einem Rechtsakt der Union vorgesehen ist, er notwendig ist, damit die Union ihre Zuständigkeit auf interner Ebene ausüben kann oder er eine interne Handlung der Union berührt.

In Bezug auf die Aushandlung und den Abschluss von Abkommen im Bereich des Verkehrs mit bildungsbezogenen,

**kulturellen und audiovisuellen
Dienstleistungen sowie in den Bereichen
Soziales und Gesundheitswesen
beschließt der Rat einstimmig. Die
Abkommen werden gemeinsam von der
Union und den Mitgliedstaaten
geschlossen.**

Begründung:

Abs. 1

Um dem Missverständnis vorzubeugen, die Union sei auch für das nationale Wettbewerbsrecht zuständig, sollte in Art. I-12 von der Festlegung „ihrer“ Wettbewerbsregeln gesprochen werden.

Abs. 2

Der Bereich der bildungsbezogenen, kulturellen und audiovisuellen Dienstleistungen steht in besonders enger Verbindung mit der nationalen Identität der Mitgliedstaaten. Daher ist die einstimmige Beschlussfassung im Rat und der Abschluss der Abkommen gemeinsam mit den Mitgliedstaaten angebracht ("Exception culturelle").

Letzteres gilt auch für die anderen im derzeit gültigen Artikel 133 Absatz 6 Unterabsatz 2 EG-Vertrag genannten Bereiche (Soziales und Gesundheitswesen), weil die Gemeinschaft hier nur sehr eingeschränkte Zuständigkeiten besitzt.

AMENDMENT FORM

Suggestion for amendment of Article : I-12

By Mr : Joschka Fischer

Status : - Member

Artikel I-12: Ausschließliche Zuständigkeiten

(1) Die Union hat ausschließliche Zuständigkeit ~~für die Festlegung der Wettbewerbsregeln im Binnenmarkt~~ sowie in den folgenden Bereichen:

- die Währungspolitik für die Mitgliedstaaten, die den Euro eingeführt haben,
- die gemeinsame Handelspolitik,
- die Zollunion,
- die Erhaltung der biologischen Meeresschätze im Rahmen der gemeinsamen Fischereipolitik.

(2) Die Union hat ausschließliche Zuständigkeit für den Abschluss internationaler Übereinkommen, wenn ein solcher Abschluss in einem Rechtsakt der Union vorgesehen ist, er notwendig ist, damit die Union ihre Zuständigkeit auf interner Ebene ausüben kann oder soweit er einen internen ~~Handlung~~ Rechtsakt der Union ~~berührt~~ beeinträchtigt.

Explanation (if any) :

Absatz 1: Die Wettbewerbsregeln im Binnenmarkt gehören zu den geteilten Kompetenzen zwischen der Union und den Mitgliedstaaten. Der Ministerrat hat mit der Verordnung 1/03 die Dezentralität und Subsidiarität als wesentliche Prinzipien der Anwendung des Wettbewerbsrechts festgeschrieben und damit bewusst Spielräume für die Gestaltung des Wettbewerbsrechts in den Mitgliedstaaten eingeräumt. Damit wurde eine Balance zwischen Wettbewerbsregeln auf der EU-Ebene und auf der Ebene der Mitgliedstaaten erreicht sowie den unterschiedlichen verfahrensrechtlichen Systemen und Kulturen in den Mitgliedstaaten Rechnung getragen.

Absatz 2: Da fast alle Übereinkommen in irgendeiner Weise eine interne Handlung der Union „berühren“ können, würde dies weit über die AETR-Rechtsprechung des EuGH hinausgehen. In Anlehnung an diese Rechtsprechung sollte daher formuliert werden: „ ... oder soweit er einen internen Rechtsakt der Union beeinträchtigt.“

AMENDMENT FORM

Suggestion for amendment of Article : I-12

By Mr : Hain

Status : - Member -

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.

~~2. Where the Union has~~ 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.~~

in accordance with Article 32(3) of Part 2 that competence shall be exclusive:

- where a legislative act of the Union confers exclusive competence;
- where the conclusion of the agreement is necessary to enable the Union to exercise its competence internally, or
- to the extent that the agreement would affect the Union's common rules or distort their scope.

Explanation (if any) :

1. *Competition policy is not an exclusive competence. It is a shared competence. We have therefore inserted it in article 13.*
2. *This is a more accurate reflection of case law. The current Praesidium draft results in over-simplification (on a strict reading of their draft concerning the effect of legislative acts, if a legislative act provides for the conclusion of an international agreement (whichever body is permitted to exercise competence), the Union would have exclusive competence). In the final tiret 'or distorts' has been added as this reflects the wording of the AETR judgement. 'Internal acts' has been changed to common rules as this reflects the language of the jurisprudence in the AETR and Open Skies case.*

FICHE AMENDEMENT

Proposition d'amendement à l'Article: 11

Déposée par Monsieur: Erwin Teufel

Qualité: Membre

Texte du Praesidium

- (1) Die Union verfügt über eine ausschließliche Zuständigkeit für die Gewährleistung eines freien Personen-, Waren-, Dienstleistungs- und Kapitalverkehrs und für die Festlegung von Wettbewerbsregeln im Binnenmarkt sowie in folgenden Bereichen:
- Zollunion
 - gemeinsame Handelspolitik
 - Währungspolitik für die Mitgliedstaaten, die den Euro eingeführt haben
 - Erhaltung der biologischen Meeresschätze im Rahmen der gemeinsamen Fischereipolitik.

Amendement proposé

- (1) Die Union verfügt über eine ausschließliche Zuständigkeit für die **grundsätzliche** Gewährleistung eines freien Personen-, Waren-, Dienstleistungs- und Kapitalverkehrs und für die Festlegung von Wettbewerbsregeln im Binnenmarkt sowie in folgenden Bereichen:
- Zollunion
 - gemeinsame Handelspolitik
 - Währungspolitik für die Mitgliedstaaten, die den Euro eingeführt haben
 - Erhaltung der biologischen Meeresschätze im Rahmen der gemeinsamen Fischereipolitik.

Begründung:

Generalvorbehalt:

Vor einer Zustimmung zu der Aufspaltung der Zuständigkeit für den Binnenmarkt in Art. 11 Abs. 1 und Art. 12 Abs. 4 muss geklärt werden, wie die Einzelermächtigungen zum Binnenmarkt im zweiten Teil konkretisiert werden. Es ist zu berücksichtigen, dass im Rahmen der Grundfreiheiten auch die Mitgliedstaaten teilweise gesetzgebungsbefugt bleiben (z. B. nationale Ausbildungsordnungen und Befähigungsnachweise sowie Regelungen der Mitgliedstaaten zu Bestimmungen der öffentlichen Sicherheit und Ordnung im Rahmen der Freizügigkeitsregeln; Produktanforderungen im Rahmen der Warenverkehrsfreiheit).

FICHE AMENDEMENT

Proposition d'amendement à l'Article: 11

Déposée par Monsieur: Erwin Teufel

Qualité: Membre

Texte du Praesidium

- (1) L'Union dispose d'une compétence exclusive pour assurer la libre circulation des personnes, marchandises, services et capitaux et établir les règles de concurrence, au sein du marché intérieur, ainsi que dans les domaines suivants:
- l'Union douanière,
 - la politique commerciale commune,
 - la politique monétaire pour les Etats membres qui ont adopté l'euro,
 - la conservation des ressources biologiques de la mer dans le cadre de la politique commune de la pêche.

Amendement proposé

- (1) L'Union dispose d'une compétence exclusive pour assurer **en principe** la libre circulation des personnes, marchandises, services et capitaux et établir les règles de concurrence, au sein du marché intérieur, ainsi que dans les domaines suivants:
- l'Union douanière,
 - la politique commerciale commune,
 - la politique monétaire pour les Etats membres qui ont adopté l'euro,
 - la conservation des ressources biologiques de la mer dans le cadre de la politique commune de la pêche.

Explication:

Réserve générale:

Il faut connaître les autorisations spéciales dans la partie II de la constitution en ce qui concerne le marché intérieur avant qu'on puisse juger sur l'utilité de la division des compétences du marché intérieur prévues dans les articles 11 (1) et 12 (4). Il faut reconnaître que les Etats membres restent compétents de légiférer en partie dans le domaine des libertés fondamentales (voir par exemple en matière de la libre circulation des personnes les règles nationales sur la formation professionnelle, les diplômes et certificats et les dispositions justifiés par des raisons d'ordre public et de sécurité publique ; en matière de la libre circulation des marchandises les dispositions sur la qualité des produits etc.).

AMENDMENT FORM

Suggestion for amendment of Article : 11

By Ms / Mr : Representatives of the Assembly of the Republic - Portugal

Members Maria Eduarda Azevedo, Alberto Costa

Alternates António Nazaré Pereira, Guilherme d'Oliveira Martins

Status :

Article 11

Exclusive competences

1. The Union shall have exclusive competence to, **within the internal market**, ensure the free movement of persons, goods, services and capital and establish **fair** competition rules, and in the following areas:

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-
- **common agricultural policy**
- **common fisheries policy**

Explanation (if any) : The present proposal leads to the elimination of the reference to “agriculture and fisheries” in article 12.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 11

Déposée par Madame ou Monsieur : Représentants de l'Assemblée de la République - Portugal

- **Membre:** Maria Eduarda Azevedo, Alberto Costa

- **Suppléant:** António Nazaré Pereira, Guilherme d'Oliveira Martins

Article 11

Les compétences exclusives

1. L'Union dispose d'une compétence exclusive pour assurer, **au sein du marché intérieur**, la libre circulation des personnes, marchandises, services et capitaux et une concurrence **non faussée**, ainsi que dans les domaines suivants:

-
-
- **la politique agricole commune**
- **la politique commune de la pêche**

Explication éventuelle : Cette proposition a pour conséquence l'annulation du point "l'agriculture et la pêche" de l'article 12.

Proposition d'amendement à l'Article 11, Par. 1

**Déposée par Monsieur Luis Marinho, Membre
et par Madame Elena Paciotti, Monsieur Valdo Spini et Monsieur Carlos Carnero,
Suppléants**

IT Version

Articolo 11: Competenze esclusive

1. L'Unione ha competenza esclusiva nei settori della libera circolazione delle persone, delle merci, dei servizi e dei capitali, nella definizione delle norme di concorrenza nell'ambito del mercato interno e nelle seguenti materie:

- unione doganale,
- politica commerciale comune,
- politica monetaria per gli Stati membri che adottano l'euro,
- conservazione delle risorse biologiche del mare nel quadro della politica comune della pesca.
- *politiche strutturali e di coesione.*
- *finanziamento del bilancio dell'Unione.*

1 bis (nuovo). L'Unione ha competenza esclusiva per la definizione e la conduzione della politica estera e di sicurezza comune.

Explication éventuelle:

La politica strutturale con finalità di coesione nell'ambito dell'Unione é per sua natura di carattere sovranazionale, così come il bilancio dell'Unione e la definizione della politica estera comune.

Proposition d'amendement à l'Article 11, Par. 1

**Déposée par Monsieur Luis Marinho, Membre
et par Madame Elena Paciotti, Monsieur Valdo Spini et Monsieur Carlos Carnero,
Suppléants**

EN Version

Article 11: Exclusive competencies

1. The Union shall have exclusive competence to ensure the free movement of persons, goods, services and capital, and establish competition rules, within the internal market, and in the following areas:

- customs union,
- common commercial policy,
- monetary policy for the Member States who ***adopt*** the euro,
- the conservation of marine biological resources under the common fisheries policy.
- ***structural cohesion policy.***
- ***funding of Union budget.***

1 (new). The Union shall have exclusive competence in the definition and management of common foreign and security policy.

Explication éventuelle:

Structural policy aimed at cohesion in the Union is supra-national by its very nature, as is the Union budget and the definition of common foreign policy.

AMENDMENT FORM

Suggestion for amendment of Article : 11

By Ms / Mr : Marie Nagy

Status : - Member - Alternate

Article 11: Exclusive competences

1. The Union shall have exclusive competence to ensure the free movement of persons, goods, services and capital, and establish competition rules, within the internal market, and in the following areas:
 - customs union,
 - common commercial policy,
 - monetary policy for the Member States who have adopted the euro,
 - the conservation of marine biological resources under the common fisheries policy.
 - **asylum and immigration policy**
 - **the external representation of the Union**

 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.

 - 3. The Union shall have exclusive competence in the drawing up and the running of the foreign and defence policy, the legal basis of the common area of freedom security and the funding of the Unions budget.**
-

Explanation (if any) :

FICHE AMENDEMENT

Proposition d'amendement à l'Article 11

Déposée par Monsieur Dominique de Villepin

Qualité : Membre

Article 11: Les domaines de compétences exclusives

1. L'Union dispose d'une compétence exclusive pour assurer la libre circulation des personnes, marchandises, services et capitaux, au sein du marché intérieur, ainsi que dans les domaines suivants:
 - l'Union douanière,
 - **selon les modalités définies par la deuxième partie de la présente Constitution, la politique commerciale commune, à l'exception des accords dans le domaine du commerce des services culturels et audiovisuels, des services d'éducation, des services sociaux et de santé humaine, ainsi que dans le domaine de l'investissement,**
 - la politique monétaire pour les Etats membres qui ont adopté l'euro,
 - la conservation des ressources biologiques de la mer dans le cadre de la politique commune de la pêche.
 2. suppression
-

Explication éventuelle :

AMENDMENT FORM

Suggestion for amendment of Article : 11.2

By Lord Tomlinson

Status :- Alternate

Delete

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article 11

By **Mr Andrew Duff, Mr Dimitrij Rupel, Mr Paul Helminger, Mr István Szent-Iványi and Mr Lamberto Dini.**

Status : **Members and alternate member.**

Article 11: Exclusive competences

11.1. *In accordance with Article 10.1*, the Union shall have exclusive competence to ensure the free movement of persons, goods, services and capital, and establish competition rules, in the following areas:

- customs union,
- *internal market, with the exception of fiscal policy,*
- common commercial policy,
- monetary policy for the Member States who have adopted the euro.

11.2 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.

Explanation:

11.1 It would be useful to refer to the description of this category in Article 10.1.

Confusingly, the Praesidium's draft has the four principles behind the foundation and operation of the internal market in the 'exclusive' category but again refers to the internal market as a shared competence in Article 12.4 in which case, under the provisions of Article 10.2, Member States may act only if the Union has not done so.

*If we elevate the internal market to the exclusive category, as we propose here, Member States may act only if empowered to do so by the Union. In the field of the internal market the scope of integration and the scale of activity is already very extensive in the existing Union. There is certainly no question of going back on the *acquis communautaire*. But the recategorisation of the*

internal market as an exclusive competence would strengthen the Union's role in making a reality of the four freedoms in the enlarged, and possibly more centrifugal Union.

The exclusion of fiscal policy is a safeguard for the Member States in a sensitive area involving national sovereignty. The question of tax harmonisation should therefore be specified as the exception to the rule and remain a shared competence (see Article 12.4).

Moreover, the proposed extension of the application of the principle of subsidiarity into the exclusive category (see Article 9.2) provides an extra assurance.

The reader of the Constitution must be able to see quickly that the Union's principal competence lies in the economic field. Given that the Convention has decided to install this catalogue of exclusive competences, let us not define it either rigidly or absurdly.

For that reason he or she would be confused by the reference to the conservation of marine resources, a lesser issue which is part and parcel of the common fisheries policy (shared competence). An alternative approach would be to elevate the whole Common Fisheries Policy - and, by inference, the Common Agricultural Policy - to the exclusive category. Why not?

FICHE AMENDEMENT

Proposition d'amendement à l'Article 11 :

Déposée par M. Pierre LEQUILLER, Président de la Délégation pour l'Union européenne

Article 11 :

A la fin du point 2, rajouter l'alinéa suivant : "Le présent paragraphe ne s'applique pas à la conclusion des accords définis par l'article 12, paragraphe 4, dernier alinéa, comme relevant de la compétence partagée de l'Union et des États membres".

Explication éventuelle :

L'existence d'un acte interne dans les domaines du commerce des services audiovisuels, culturels, d'éducation, de santé ou sociaux ne remet pas en cause la compétence partagée dans ces domaines, en particulier en ce qui concerne la compétence de conclure un accord international.

FICHE AMENDEMENT

Proposition d'amendement à l'Article 11 :

Déposée par M. Pierre LEQUILLER, Président de la Délégation pour l'Union européenne

Article 11 :

Dans le point 2, remplacer les mots "d'exercer sa compétence au niveau interne" par les mots "de réaliser l'un de ses objectifs".

Explication éventuelle :

La compétence peut être exercée en l'absence d'accord international. Par contre la conclusion d'accords peut être en revanche nécessaire pour réaliser un des objectifs de l'Union.

FICHE AMENDEMENT

Proposition d'amendement à l'Article 11 :

Déposée par M. Pierre LEQUILLER, Président de la Délégation pour l'Union européenne

Article 11 :

Dans le point 1, après les mots : "adopté l'euro", rajouter l'alinéa " - les organisations communes de marché des produits agricoles couverts par la deuxième partie,"

Explication éventuelle :

Les organisations communes de marché relèvent de la compétence exclusive de l'Union.

FICHE AMENDEMENT

Proposition d'amendement à l'Article 11 :

Déposée par M. Pierre LEQUILLER, Président de la Délégation pour l'Union européenne

Article 11 :

Dans le point 1, après les mots "la politique commerciale commune", insérer les mots "à l'exception des accords internationaux visés à l'article 12, paragraphe 4, dernier alinéa"

Explication éventuelle :

Il est indispensable de maintenir la compétence partagée entre l'Union et les États membres dans les accords visés par l'article 133, paragraphe 6, deuxième alinéa du TCE.

AMENDMENT FORM

Suggestion for amendment of Article 11: Les compétences exclusives

By Ms Meglena Kuneva

Status : Member

Réserve générale quant à l'adoption d'un catalogue des compétences.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article 11.1:

By Mrs Lena Hjelm-Wallén and Mr Sven-Olof Petersson, government representatives and Mr Sören Lekberg and Mr Kenneth Kvist, national parliament representatives.

Status : - **Members: Hjelm-Wallén and Lekberg**
 - **Alternates: Petersson and Kvist**

1. The Union shall have exclusive competence ~~to ensure the free movement of persons, goods, services and capital, and establish competition rules, within the internal market~~¹ in the following areas:

- customs union,
- common commercial policy,
- monetary policy for the Member States who have adopted the euro,
- the conservation of marine biological resources under the common fisheries policy.

Explanation

¹ The internal market should be categorised as shared competence (The principle of subsidiarity should apply in this area)

AMENDMENT FORM

Suggestion for amendment of Article 11 :

By Mr Joschka Fischer

Status : - Member

Artikel 11: Ausschließliche Zuständigkeiten

(1) Die Union verfügt über eine ausschließliche Zuständigkeit [für die Gewährleistung eines freien Personen-, Waren-, Dienstleistungs- und Kapitalverkehrs ~~und für die Festlegung von Wettbewerbsregeln im Binnenmarkt sowie~~] in folgenden Bereichen:

- Zollunion
- gemeinsame Handelspolitik
- Währungspolitik für die Mitgliedstaaten, die den Euro eingeführt haben

Erhaltung der biologischen Meeresschätze im Rahmen der gemeinsamen Fischereipolitik.

(2) Die Union verfügt über eine ausschließliche Zuständigkeit für den Abschluss eines internationalen Übereinkommens, wenn dieser Abschluss in einem gemäß anderen Zuständigkeitsbestimmungen erlassenen Rechtsakt der Union vorgesehen ist, erforderlich ist, um der Union die Ausübung ihrer Zuständigkeit auf interner Ebene zu ermöglichen oder soweit dieser Abschluss einen internen Rechtsakt der Union beeinträchtigen kann~~berührt~~.

Explanation (if any) :

zu (1): Die Frage, ob die Union über die ausschließliche Zuständigkeit für die Gewährleistung der vier Grundfreiheiten verfügt, muss noch eingehend geprüft werden.

Die Wettbewerbsregeln im Binnenmarkt gehören zu den geteilten Kompetenzen zwischen der Union und den Mitgliedstaaten.

zu (2): Ergänzungen sind zwecks sprachlicher Genauigkeit notwendig. Letzte Ergänzung entspricht EuGH Rechtsprechung.

AMENDMENT FORM

Suggestion for amendment of Article: 11

By Ms / Mr : Mr. Ms. Irena Belohorska – member, Jan Zahradil – member, Mr. Jens-Peter Bonde - member, Mr. David Heathcoat-Amory - member, Mr. William Abitbol - alternate, Mr. Peter Skaarup - member, Mr. Per Dalgaard - alternate, Mr. Esko Seppänen – alternate, and Mr. John Gormley - alternate.

Status : - Member - Alternate

Article 11: Exclusive competences

1. The Europe of Democracies shall have competence to ensure the free movement of persons, goods, services and capital, and establish competition rules, within the internal market, and in the following areas:
 - customs union,
 - common commercial policy,
 - *[deleted - monetary policy for the member states who have adopted the Euro]*
 - the conservation of marine biological resources under the common fisheries policy.
2. The Europe of Democracies shall have competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Europe of Democracies, is necessary to enable the Europe of Democracies to exercise its competence internally, or affects an internal act of the Europe of Democracies.

AMENDMENT FORM

Suggestion for amendment of Article 11:

By Elmar BROK, Jozsef SZAJER, Erwin TEUFEL, Jan Jacob VAN DIJK, René VAN DER LINDEN, Frantisek KROUPA, Jacques SANTER, Teresa ALMEIDA GARRETT, Peter ALTMAIER, Jan FIGEL, Piia Noora KAUPPI, Göran LENNMARKER, Hanja MAIJ-WEGGEN, Reinhard RACK, Joachim WÜRMELING

on behalf of the EPP Convention Group

Status: Members and Alternates

Text of the Praesidium

Proposed Amendments

Article 11: Exclusive competences

1. The Union shall have exclusive competence to ensure the free movement of persons, goods, services and capital, and establish competition rules, within the internal market, and in the following areas:

- customs union,
- common commercial policy,
- monetary policy for the Member States who have adopted the euro,
- 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.

Article 11: Exclusive competences

1. The Union shall have exclusive competence to ensure the free movement of persons, goods, services and capital, and establish competition rules, within the internal market, and in the following areas:

- customs union,
- common commercial policy,
- monetary ***and exchange-rate*** policy for the Member States who have adopted the euro, ***through the independent European Central Bank referred to in Article [X],***
- ***monetary law for the Member States who have adopted the euro,***
- the conservation of marine biological resources under the common fisheries policy,
- ***the definition of the tasks, priority objectives and the organisation of the Structural Funds of the Union,***
- ***Union statistics,***
- ***rules to ensure the proper functioning of the Union Institutions, including language, staff and data protection rules,***

- without prejudice to the institutional autonomy of each Institution,*
- *the funding of the Union budget.*

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.

Explanation:

Para 1:

- **Exchange-rate policy:** *Within the euro area, there exists, in parallel to the single monetary policy, also a single exchange-rate policy since 1 January 1999 – see Article 4(2), 105(2), second indent and 111 EC. This should be taken into account in this list of exclusive competences.*
- **Through the independent European Central Bank:** *This amendment is necessary as Article 10(1) of the Praesidium text states that in the field of exclusive competences, “only the Union may legislate and adopt legally binding acts”. Under the acquis, however, monetary policy is not defined and implemented by means of legislation adopted by the Council and the Parliament, but by the independent European Central Bank, in accordance with the EMU provisions and the Statute of the ESCB. It is therefore essential that this is made crystal clear in the text to avoid a fundamental change of the system under which the monetary policy for the euro currently is conducted.*
- **Monetary law:** *This includes all legislative provisions related to the definition of the single currency and to its legal tender status (in particular the Euro regulation No 974/98), legislation to protect the euro against counterfeiting (e.g. Regulation No 1338/2001) and legislation to harmonise the denominations and technical specifications of the euro coins. Today, most of these measures are based on Article 123(4) of the EC Treaty. However, it appears that the Praesidium intends to delete this provision from the constitutional text as redundant. This would take away the legal bases for the current monetary law of the euro and for all possible future modifications, amendments or complementary measures. It is therefore suggested to include this important exclusive competence explicitly in the list of exclusive competences. See also Article 70(d) in the EPP Discussion Paper (Frascati version, as amended, 27 January 2003).*
- **the definition of the tasks, priority objectives and the organisation of the Structural Funds of the Union:** *is intended to incorporate the exclusive competence under Article 161(1) of the EC Treaty. See also para 19 of the Report Lamassoure and Article 70 (j) in the EPP Discussion Paper (Frascati version, as amended, 27 January 2003).*
- **Union statistics:** *is intended to incorporate the exclusive competence under Article 285(1) of the EC Treaty, which is highly relevant in current Community practice. See also Article 70 (l) in the EPP Discussion Paper (Frascati version, as amended, 27 January 2003).*

- *Rules ensuring the proper functioning of the Union Institutions, including the use of language, staff and data protection rules, without prejudice to the institutional autonomy of each Institution:* is meant to incorporate the exclusive competences under Articles 283, 286, 290 of the EC Treaty. See also Article 70 (m), (n) and (p) in the EPP Discussion Paper (Frascati version, as amended, 27 January 2003).

FICHE AMENDEMENT

Proposition d'amendement à l'Article 11 para 1:

Déposée par M. Olivier DUHAMEL,
M. Luis MARINHO,
Mme Anne VAN LANCKER,
M. Klaus HÄNSCH
M. Caspar EINEM

Qualité: - Membres

Mme Pervenche BERÈS,
Mme Maria BERGER,
M. Carlos CARNERO,
Mme Elena PACIOTTI,

Qualité: - Suppléants

Article 11: Les compétences exclusives

1. L'Union dispose d'une compétence exclusive pour assurer la libre circulation des personnes, marchandises, services et capitaux et établir les règles de concurrence, au sein du marché intérieur, ainsi que dans les domaines suivants:
 - l'Union douanière,
 - la politique commerciale commune,
 - la politique monétaire pour les Etats membres qui ont adopté l'euro,
 - la conservation des ressources biologiques de la mer dans le cadre de la politique commune de la pêche,
 - **le financement du budget (recettes et dépenses) de l'Union.**
-

Explication éventuelle:

AMENDMENT FORM

Suggestion for amendment of Articles : 11 - 15

By MM : Kiljunen and Vanhanen

Status : - Members

NB

If our proposal for an article *3 bis* is adopted, articles 11 – 15 can be deleted.

If our *3 bis* is not adopted, articles 11 – 15 should be amended as proposed on the following pages.

AMENDMENT FORM

Suggestion for amendment of Article 11

By Mr : Jan KOHOUT

Status : - Member

Art. 11.2.:

The wording "*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*" does not imply precise nature and quality of a legislative act concerned, The type of legislative act intended for this context should not be of secondary legislation encompassing a transfer of competences to the Union level purely applying the legal rule "*Kompetenz-Kompetenz*" which an act of secondary legislation might inherently indicate.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 11

By MM : Kiljunen and Vanhanen

Status : - Members

-
1. Subject to the provisions of Part Two of this Constitution, the Union shall have exclusive competence **[deletion]** in the following areas:
- customs union,
 - common commercial policy,
 - monetary policy for the Member States who have adopted the euro,
 - the conservation of marine biological resources under the common fisheries policy,
 - **competition rules, insofar as concerns the internal market.**
1. The Union shall have exclusive competence for the conclusion of an international agreement when and insofar as the conclusion of an international agreement could affect common rules adopted by the Union; when the Union has, in an internal 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.
-

Explanation (if any) :

The text should make it plain that the precise scope and nature of the Union's competence in each substantive policy area, even in the case of exclusive competence, is to be defined by the power-conferring provisions (legal bases) in Part Two. This would make it possible to take account of specific concerns of Member States in particular policy areas, such as common commercial policy.

The reference in paragraph 1 to free movement of persons, goods, services and capital as an area of exclusive Union competence is confusing in the light of the treatment of the internal market as an area of shared competence in Article 12, and should therefore be deleted. Competition law, insofar as concerns the internal market, could however be mentioned in paragraph 1 as one of the areas of the Union's exclusive competence.

Article 11, paragraph 2, should be rephrased as proposed to better reflect the current state of the law (cf., e.g., Opinion 1/94 [1994] ECR I-5267, paras 77, 89 and 95).

Amendments submitted by Teija Tiilikainen and Antti Peltomäki 17 February 2003

[Option 1: If there is a provision on the Union's activities in accordance with Article 3bis above, draft Articles 11-15 could be deleted.]

[Option 2: In the absence of Article 3bis, Article 11 should read as follows:

Article 11: Exclusive competences

1. **Subject to the provisions of Part Two of this Constitution,** the Union shall have exclusive competence [...] in the following areas:
 - customs union,
 - common commercial policy,
 - monetary policy for the Member States who have adopted the euro,
 - the conservation of marine biological resources under the common fisheries policy,
 - **competition rules, insofar as concerns the internal market.**
2. The Union shall have exclusive competence for the conclusion of an international agreement **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.]**

Commentary:

The text should make it plain that the precise scope and nature of the Union's competence in each substantive policy area, even in the case of exclusive competence, is to be defined by the power-conferring provisions (legal bases) in Part Two. This would make it possible to take account of specific concerns of Member States in particular policy areas, such as common commercial policy.

The reference in paragraph 1 to free movement of persons, goods, services and capital as an area of exclusive Union competence is confusing in the light of the treatment of the internal market as an area of shared competence in Article 12, and should therefore be deleted. Competition law, insofar as concerns the internal market, could however be mentioned in paragraph 1 as one of the areas of the Union's exclusive competence.

Article 11, paragraph 2, should be rephrased as proposed to better reflect the current state of the law (cf., e.g., Opinion 1/94 [1994] ECR I-5267, paras 77, 89 and 95).

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 11

Déposée par Madame ou Monsieur : Mme PALACIO

Qualité : - Membre - Suppléant

Article 11: Les compétences exclusives

1. L'Union dispose d'une compétence exclusive pour assurer la libre circulation des personnes, marchandises, services et capitaux et établir les règles de concurrence, au sein du marché intérieur, ainsi que dans les domaines suivants:
 - l'Union douanière,
 - la politique commerciale commune,
 - la politique monétaire pour les Etats membres qui ont adopté l'euro,
 - les organisations communes de marché des produits agricoles,
 - la conservation des ressources biologiques de la mer dans le cadre de la politique commune de la pêche.
2. L'Union dispose d'une compétence exclusive pour la conclusion d'un accord international lorsque cette conclusion est prévue dans la présente Constitution ou dans un acte législatif de l'Union ou lorsque, n'étant pas explicitement prévue, ~~[qu']~~elle est nécessaire pour permettre à l'Union d'exercer sa compétence au niveau interne ou ~~[qu']~~elle affecte un acte interne de l'Union.

Explication :

Les OCM agricoles relèvent de la compétence exclusive de l'Union.

Il est opportun de modifier légèrement la rédaction du paragraphe 2 afin de mieux refléter la jurisprudence de la Cour de Justice.

AMENDMENT FORM

Suggestion for amendment of Article : 11

By Mr : Gianfranco FINI

Status : - Member

Articolo 11: Competenze esclusive

1. L'Unione ha competenza esclusiva ***per assicurare:***
 - ~~la nei settori della~~ libera circolazione ***dei cittadini dell'Unione*** ~~[delle persone]~~, delle merci, dei servizi e dei capitali
 - ~~la nella~~ definizione ed attuazione delle norme di concorrenza nell'ambito del mercato interno e nelle seguenti materie:
 - l'unione doganale,
 - la conservazione delle risorse biologiche del mare nel quadro della politica comune della pesca.
 - la politica commerciale comune,
 - la politica monetaria per gli Stati membri che hanno adottato l'euro,
2. L'Unione ha competenza esclusiva per la conclusione di accordi internazionali allorché tale conclusione è prevista in un atto legislativo dell'Unione, è necessaria per consentire all'Unione di esercitare le sue competenze a livello interno o riguarda un atto interno dell'Unione.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 11

By Ms / Mr : Johannes Voggenhuber, Eva Lichtenberger

Status : - Member - Alternate

Article 11: Exclusive competences

1. The Union shall have exclusive competence to ensure the free movement of persons, goods, services and capital, and establish competition rules, within the internal market, and in the following areas:
 - customs union,
 - common commercial policy,
 - monetary policy for the Member States who have adopted the euro,
 - the conservation of marine biological resources under the common fisheries policy.
 - **asylum and immigration policy**
 - **the external representation of the Union**
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.
3. **The Union shall have exclusive competence in the drawing up and the running of the foreign and defence policy, the legal basis of the common area of freedom security and the funding of the Unions budget.**

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 11

By Mr Kirkhope MEP

Status : Member

1. The **Community** shall have exclusive competence to ensure the free movement of persons, goods, services and capital, and establish competition rules, within the internal market, and in the following area:

- customs union **orientated towards international free trade,**
- **DELETE**
- **DELETE**
- **DELETE**

2. The **Community** shall have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the **Community**, is necessary to enable the **Community** to exercise its competence internally, or affects an internal **Community** act.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 11

By Ms / Mr :

Ján FIGEL (Slovakia, National Council of the Slovak Republic)

Status : - Member - Alternate

Paragraph 1 will be changed:

The Union shall have exclusive competence to ensure the free movement of persons, goods, services and capital, and establish competition rules, within the internal market, and in the following areas:

- customs union,
- common commercial policy,
- monetary *and exchange-rate* policy for the Member States who have adopted the euro, *through the independent European Central Bank referred to in Article XXX,*
- *monetary law for the Member States who have adopted the euro,*
- the conservation of marine biological resources under the common fisheries policy,
- *the definition of the tasks, priority objectives and the organisation of the Structural Funds of the Union,*
- *Union statistics,*
- *rules to ensure the proper functioning of the Union Institutions, including language, staff and data protection rules, without prejudice to the institutional autonomy of each Institution.*

AMENDMENT FORM

Suggestion for amendment of Article 11

By : G.M de Vries,
R. van der Linden

Th. J.A.M. de Bruijn,
J.J. van Dijk,

Status : Members- Alternate Members

Article 11: Exclusive competences

1. The Union shall have exclusive competence to ensure the free movement of persons, goods, services and capital, and establish competition rules, within the internal market, and in the following areas:

- customs union,
- common commercial policy,
- monetary policy for the Member States who have adopted the euro,
- the conservation of marine biological resources under the common fisheries policy.

[These areas are described in more detail in part II of the Constitution.](#)

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.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 11

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status : - Member ~~Alternate~~

Artikel 11: Ausschließliche Zuständigkeiten

(1) Die Union verfügt über eine ausschließliche ~~Z~~**Gesetzgebungs**zuständigkeit ~~für die Gewährleistung eines freien Personen-, Waren-, Dienstleistungs- und Kapitalverkehrs und für die Festlegung von Wettbewerbsregeln im Binnenmarkt sowie in folgenden Bereichen:~~

- Zollunion,
- gemeinsame Handelspolitik,
- Währungspolitik für die Mitgliedstaaten, die den Euro eingeführt haben,
- Erhaltung der biologischen Meeresschätze im Rahmen der gemeinsamen Fischereipolitik.

(2) Die Union verfügt über eine ausschließliche Zuständigkeit für den Abschluss ~~eines~~ internationalen Übereinkommens, wenn dieser ~~Abschluss~~ **in dieser Verfassung oder** in einem Rechtsakt der Union vorgesehen ist; **oder einen internen Rechtsakt der Union berührt oder** erforderlich ist, um der Union die Ausübung ihrer Zuständigkeit auf interner Ebene zu ermöglichen ~~oder einen internen Rechtsakt der Union berührt.~~

Explanation (if any) :

Absatz 1:

Den in der Aufzählung genannten Bereichen ist lediglich gemeinsam, dass die Gesetzgebungszuständigkeit ausschließlich bei der Union liegt. Die Zollverwaltungszuständigkeit und die Kompetenz für die Vollziehung der Grundsätze der Handelspolitik liegen zum Beispiel bei den Mitgliedstaaten.

Die Gesetzgebungskompetenzen, die auf die Errichtung und das Funktionieren des Binnenmarktes gerichtet sind, sind nicht ausschließliche Kompetenzen. Sie unterliegen deshalb auch dem Subsidiaritätsgrundsatz (vgl. *EuGH*, Urteil vom 10.12.2002, Rs. C-491/01, Rn. 179; vgl. auch *EuGH*, Urteil vom 9.10.2001, Rs. C-C-377/98, Rn. 32, sowie *EuGH*, Urteil vom 13.5.1997, Rs. C-233/94, Rn. 28).

Absatz 2:

Die ausschließliche Zuständigkeit zum Abschluss völkerrechtlicher Verträge kann sich auch unmittelbar aus der Verfassung ergeben (vgl. Art. 133 Abs. 1 EGV).

AMENDMENT FORM

Suggestion for amendment of Article 11, 12 , 15

By: Mr Józef Oleksy

Status: Member

Proposed Amendments:

The possibility of supplementing art. 11, 12 and 15 with new areas of material law (Union policy) on the basis of the annexed attachment.

Explanation:

Attachment

Proposals for division of competences

Name of document	Exclusive competence	Shared competence	Supplementing and supporting competences
attachment CONV 17/02 dated 28 March 2002 r. titled „Description of the current system for the delimitation of competence between the European Union and the Member States”, transmitted by the Secretariat of the Convent to its members.”	These constitute legislative competence, which include: -common commercial policy; -biological protection of the natural resources of the sea; -monetary policy for the twelve Member States of the EMU -Internal Market; (harmonization of legislation); -expansion of joint institutions such as Europol and Eurojust.	-EU citizenship; -agriculture and fisheries; -free movement of persons, goods, services and capital; -visas, asylum and immigration policy; -transport; -competition; -taxation (fiscal policy); -social policy; -environment; -consumer protection; -health; -trans-European networks (interoperability” and standards) -energy; -protection from natural disasters (civil protection); -tourism; -Title V of TEU with the exception of defense -Title VI of the TEU.	-economic policy; -employment; -education; -vocational training; -culture; -trans-European networks; -industry; -economic and social cohesion; -technological research and development; -development cooperation; - defence (Title V of the TEU).

<p>The Belgian proposal dated 13.05.2002 r. (submitted to the European Convent).</p>	<ul style="list-style-type: none"> -rights and duties of EU membership; -customs policy; -immigration and asylum policy; -common commercial policy; -EU budget; -representation of the Union abroad; -special cases such as protection of natural resources of the sea. 	<ul style="list-style-type: none"> -establishing the functioning of the Internal Market (free movement of persons, capital, goods and services as well as competition policy); -common agricultural policy; -policy on fishing; -economic policy; -social policy; -employment; -health care; -consumer right's protection; -transport; -trans-European networks -energy policy; -environmental protection -policy on economic and social cohesion; -cooperation of the police and courts in penal cases; -cooperation of courts in civil cases; -common foreign and security policy; -defense policy; -cooperation in development; -association of nations and transoceanic territories. 	<ul style="list-style-type: none"> -education; -vocational training; -culture; -youth; -industry; -technical research and development.
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AMENDMENT FORM

Suggestion for amendment of : Article 11

By: Robert MacLennan

Status : Alternate

Article 11.1: The Union shall have exclusive competence in the following areas:

- customs union
- common commercial policy
- monetary policy for the Member States who have adopted the euro

Article 11.2 *In the following areas the Union shall have exclusive competence only to the extent prescribed in Part II:*

- *the free movement of persons, goods, services and capital*
- *the establishment of competition rules within the internal market*
- *the regulation of transport*
- *the common organisation of agricultural markets*

Article 11.3 *This article needs to be redrafted.*

Explanation :

11.1 The reference in the Praesidium's draft to the conservation of marine biological resources raises uncertainties of boundary definition due to the shared competence for fisheries policy set out in draft article 12. If the matter requires definition it would be preferable to do it in Part II.

The reader of the Constitution must be able to see quickly that the Union's principal competence lies in the economic field. For that reason he or she would be confused by the reference to the conservation of marine resources which is part and parcel of the common fisheries policy.

11.2 The exclusive competence of the Union listed in the original draft are all subject to limiting definitions which need to be set out if desirable. The Union's policy of the minimal necessary harmonization would be at risk without reference to these limitations.

11.3 This article is unsatisfactory as it stands because it is unclear. It appears to be attempting to translate the language of the Court's jurisprudence into new categories of exclusive competence.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 11

Déposée par Madame ou Monsieur : Rt Hon David Heathcoat-Amory, MP

Qualité : - Membre *X* - Suppléant

11.1 After « Euro » insert « excepting those elements which impinge upon policies involving opt-out states »

Explication éventuelle

Decisions should not be made by opt-in states which affect the rights of opt-out states

11.1 Delete fourth indent relating to fisheries

Explication éventuelle

The CFP is an ecological, social and economic disaster and should be returned to national control – as has recently been called for by a Forum paper from ordinary fishermen

11.2 Delete. Replace with « The Union shall act as the representative of all the member states in concluding international agreements in areas where it is so mandated in this Treaty and when so authorised by common accord»

Explication éventuelle

The constitutional draft is a major shift of power towards the Commission. In the original draft, in international arenas where the Union has any competence, Member States can only be represented by the Union. Where an international agreement may carry secondary effect in a competence in which the Union plays a part, the role of Member states can be taken over by the Union.

Furthermore, the original draft expands the powers of the Union into areas involving intellectual property rights, criminal justice, and other contentious fields.

11.2 Delete entire article .

Explication éventuelle

This is currently case law. Attempting to codify it in this way results in over-simplification. So best left for case law. All the caveats that would be required to make this accurate would also make it far too complex for a constitution.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 11

Déposée par Madame ou Monsieur : **M. Louis Michel, M. Karel de Gucht, M. Elio di Rupo, Mme Anne Van Lancker, membres de la Convention et M. Pierre Chevalier et Mme Marie Nagy, membres suppléants de la Convention**

Qualité : - Membre - Suppléant

-
1. L'Union dispose d'une compétence exclusive pour assurer la libre circulation des personnes, marchandises, services et capitaux et établir les règles de concurrence, au sein du marché intérieur, ainsi que dans les domaines suivants:
 - l'Union douanière,
 - la politique commerciale commune,
 - 1- la politique monétaire pour les Etats membres qui ont adopté l'euro,
 - la conservation des ressources biologiques de la mer dans le cadre de la politique commune de la pêche.
 - **l'accès au territoire de l'Union des personnes**
 - **les droits et obligations découlant de la citoyenneté de l'Union**
 - **le budget (recettes et dépenses) de l'Union**
 - **la représentation externe de l'Union.**
 2. L'Union dispose d'une compétence exclusive pour la conclusion d'un accord international lorsque cette conclusion est prévue dans un acte législatif de l'Union, qu'elle est nécessaire pour permettre à l'Union d'exercer sa compétence au niveau interne, ou qu'elle affecte un acte interne de l'Union.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 11

Déposée par Monsieur : Hannes FARNLEITNER

Qualité : - Membre

Art 11.1. The Union shall have exclusive competence for

RELATION TO ART. 12(4) SHOULD BE CLARIFIED (see explication)

(...)

Explication:

Art 11.1 : *In this provision some core areas of the internal market are assigned to the Union's exclusive competences. On the other hand, in Art.12 (4) the internal market (in general, without further specifications) is mentioned as one of the principal areas of shared competence. The dividing line between exclusive and shared competence for certain aspects of the internal market seems rather unclear and could create considerable legal uncertainty.*

AMENDMENT FORM

Suggestion for amendment of Article :art. 11, 12 and 15

By Ms / Mr : Ernâni Lopes

Status : - Member

Deletion of these articles.

The Representative of the Portuguese Government has stated, in the course of the debate on the delimitation of competencies between the Union and its Member States, his opposition to a catalogue of competencies.

Such catalogue would introduce a factor of rigidity in the evolution of the Union. It would also very difficult to establish since the competencies conferred upon the Union are of a heterogenous nature and are distributed in different ways and degrees according to the areas in question.

FICHE AMENDEMENT

Proposition d'amendement à l'Article 11

Déposée par Monsieur William ABITBOL

Qualité : Suppléant

Article 11 :

1. La politique économique, la politique sociale, la politique fiscale, la politique étrangère et la politique de défense sont des compétences exclusives des Etats membres qui peuvent décider, librement, de les coordonner, de les exercer en commun ou de les réunir dans le cadre des institutions de l'Union.

L'Union est habilitée à faire des propositions qui permettent de progresser dans la voie de cette coopération.

2. La libre circulation des personnes, marchandises, services et capitaux, la politique de la concurrence, l'Union douanière, la politique commerciale commune, la politique monétaire pour les pays qui ont adopté l'euro, sont des compétences exclusives de l'Union.

Dans le respect des principes et des valeurs énoncés au titre I du présent traité constitutionnel, l'Union est habilités à négocier des accords internationaux dans les domaines de sa compétence exclusive.

Explication éventuelle :

Ce texte remplace l'ensemble du texte original de l'article visé

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 11 (1er alinéa)

Déposée par Monsieur : Alain Lamassoure

Qualité : Membre

Article 11 (1er alinéa)

1. L'Union dispose d'une compétence exclusive pour assurer la libre circulation des personnes, marchandises, services et capitaux et établir les règles de concurrence, au sein du marché intérieur, ainsi que dans les domaines suivants:

- l'Union douanière,
- la politique commerciale commune,
- la politique monétaire pour les Etats membres qui ont adopté l'euro,
- la conservation des ressources biologiques de la mer dans le cadre de la politique commune de la pêche,
- **le marché intérieur,**
- **la politique de cohésion économique et sociale,**
- **le financement du budget de l'Union.**

Explication : *C'est la conséquence de l'abandon de la notion de compétences « exclusives », au profit des compétences propres.*

AMENDMENT FORM

Suggestion for amendment of **Article 11: Exclusive competences**

By Mr Dick Roche, Representative of the Government of Ireland

Status : Member

Article 11: Exclusive competences – paragraph 2

~~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.~~

Explanation (if any) :

Article 11.2 purports to summarise the jurisprudence of the Court of Justice regarding the implied external competences of the European Community and to extend it across the range of the Union's competences. This is not acceptable and the paragraph, if retained, will have to be amended to reflect the existing situation, whereby international agreements concluded under Articles 24 and 38 TEU and mandated by Member States do not imply any transfer of competences from the Member States to the Union. The wording of any such amendment will have to be carefully considered by legal experts.

AMENDMENT FORM

Suggestion for amendment of Article : 11

By Mr Hain

Status : Member

1. The Union shall have exclusive competence in the following areas:
 - customs union,
 - common commercial policy, except as provided in Article [equivalent of present Article 133]
 - monetary policy for the Member States who have adopted the euro,
 - the conservation of marine biological resources under the common fisheries policy.
 2. *Delete. This is currently case law. Attempting to codify it in this way results in oversimplification. So best left for case law. All the caveats that would be required to make this accurate would also make it far too complex for a constitution.*
-

Explanation (if any) :

The Community does not have exclusive competence in relation to measures to ensure free movement in the internal market. This was recently confirmed by the European Court of Justice in the case of R (British American Tobacco & Imperial Tobacco) –v- Secretary of State for Health – Case C-491/01; judgement, 10 December 2002, not yet reported. In that case, the Court said of Article 95: “...that provision does not give it [the Community legislature] exclusive competence to regulate economic activity on the internal market, but only a certain competence for the purpose of improving the conditions for its establishment and functioning...” (paragraph 179). On the same principles, it follows that the Community does not have exclusive competence in the area of competition, under Articles 81-86 EC.

If the Community were to have exclusive competence in these areas, the Member States would have no power to take any measures (eg, in relation to the protection of health or consumer protection) which could affect free movement, nor to establish rules to promote competition. Plainly the Member States currently exercise powers in these areas. The Community has power to harmonise the rules in these areas, but authority to take action in these areas is effectively shared.

While the ECJ has held that the Common Commercial Policy is an area of exclusive competence, its decisions were based on Article 133 EC (formerly Article 113 EC) in its pre-Nice form. The changes to Article 133 introduced by the Treaty of Nice both add new areas of Community competence and introduce exceptions – see paragraphs (5) and (6) of Article 133. Draft article 11 must take account of these changes, in order accurately to codify the jurisprudence. This draft does so by way of a general exception. It is contrary to the aim of simplification to refer the reader to another part of the Treaty, as this draft does, but the alternative would be a relatively lengthy exposition, which would unbalance article 11.

AMENDMENT FORM

Suggestion for amendment of Article 11: Exclusive competences

By Mr Dick Roche, Representative of the Government of Ireland

Status : Member

Article 11: Exclusive competences – paragraph 1

1. The Union shall have exclusive competence **within the internal market** to ensure the free movement of persons, goods, services and capital, and **to** establish competition rules, ~~within the internal market,~~ and in the following areas, **the scope of which is determined in Part**

Two:

- customs union,
- common commercial policy
- monetary policy for the Member States who have adopted the euro,
- the conservation of marine biological resources under the common fisheries policy.

Explanation (if any) :

Greater clarity as regards the extent of exclusive competence.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : **11** (titre)

Déposée par Monsieur : **Alain Lamassoure**

Qualité : **Membre**

Article 11: Les compétences **attribuées à l'Union**

Explication : *Voir mon amendement à l'article 10§1*

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 11

Déposée par M. Hubert HAENEL, membre, et M. Robert BADINTER, suppléant.

Article 11: Les compétences exclusives

1. L'Union dispose d'une compétence exclusive pour assurer la libre circulation des personnes, marchandises, services et capitaux et établir les règles de concurrence, au sein du marché intérieur, ainsi que dans les domaines suivants:

- l'Union douanière,
- la politique commerciale commune, à l'exception du commerce des services culturels et audiovisuels, des services d'éducation, ainsi que des services sociaux et de santé,
- la politique européenne de sécurité commune, dans la mesure requise par les intérêts propres de l'Union,
- la politique monétaire pour les États membres qui ont adopté l'euro.
- ~~– la conservation des ressources biologiques de la mer dans le cadre de la politique commune de la pêche.~~

2. L'Union dispose d'une compétence exclusive pour la conclusion d'un accord international lorsque cette conclusion est prévue dans un acte législatif de l'Union, qu'elle est nécessaire pour permettre à l'Union d'exercer sa compétence au niveau interne, ou qu'elle affecte un acte interne de l'Union.

Explication éventuelle :

1. Les accords de commerce dans le secteur des services culturels et audiovisuels, des services d'éducation et des services sociaux et de santé doivent rester **du domaine des compétences partagées et non des compétences exclusives**.

Les éléments de la **politique européenne de sécurité commune** requis par les intérêts propres de l'Union doivent être de sa compétence exclusive.

La politique commune de la pêche présente les mêmes caractéristiques, du point de vue de la compétence, que la politique agricole commune. Elles ne doivent pas être dissociées. La pêche, comme l'agriculture, doit figurer parmi les compétences partagées.

AMENDMENT FORM

Suggestion for amendment of Article : Article 11.1 fourth indent

By Mr : MacCormick, Neil

Status : - Alternate

Delete the words 'the conservation of marine biological resources under the common fisheries policy'

Explanation (if any) :

The inclusion of one aspect of fisheries management as a specific point of exclusive competence is unnecessary and undesirable. As in the present Treaty, it is sufficient that new Article 12.4 brackets together agriculture and fisheries as matters of shared competence, given the impact of Article 10.2 together with the acquis communautaire. At a time when, for good reasons, the direction in Fisheries policy is towards zonal management with considerable decentralization, it is wrong in principle to exclude the operation of the principle of subsidiarity. Subsidiarity has no application in the case of exclusive competences, so inclusion of 'conservation of marine biological resources' among matters of exclusive competence is unjustified..

AMENDMENT FORM

Suggestion for amendment of Article : Artículo 11

By Ms / Mr : Borrell (miembro), Carnero y López Garrido (miembros suplentes)

Status : - Member - Alternate

Tanto en el título como en el texto del articulado debería sustituirse "exclusivas" por "*propias*", y en el punto 1: añadir los siguientes ámbitos

- políticas estructurales y de cohesión,
- política exterior, de seguridad y defensa común,
- espacio europeo de seguridad, libertad y justicia,
- presupuesto europeo, incluyendo ingresos y gastos

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : Artículo 11

By Ms / Mr : Borrell (miembro), Carnero y López Garrido (miembros suplentes)

Status : - Member - Alternate

Punto 2: sustituir desde “en un acto” hasta el final por “*en esta Constitución*”

Explanation (if any) :

FICHE AMENDEMENT

Proposition d'amendement à l'Article I-12

Déposée par MM. O'Sullivan et Ponzano

Qualité : Suppléants

Article I-12 : les compétences exclusives

1. *inchangé*
 2. L'Union dispose d'une compétence exclusive pour la conclusion d'un accord international lorsque cette conclusion est prévue dans un acte **législatif juridique obligatoire** de l'Union, qu'elle est nécessaire pour ~~permettre à l'Union d'exercer sa compétence au niveau interne~~ **réaliser l'un des objectifs de l'Union**, ou qu'elle affecte un acte interne de l'Union.
-

Explication:

Il convient d'aligner le libellé de cet article sur celui de l'article III-220 sur les accords internationaux. Outre le fait que celui-ci a fait l'objet d'un examen approfondi, il tient également mieux compte de la dimension PESC des accords internationaux (dans laquelle la référence au « législatif », à un « acte interne » ou et à la « compétence interne » est non-pertinente). Le libellé proposé aurait pour effet de rendre mixtes tous les accords PESC, c-à-d de les soumettre à un mécanisme décisionnel aussi lourd que celui applicable à la modification du traité constitutionnel.

AMENDMENT FORM

Suggestion for amendment of Article 12, par. 4

By Mr Poul Schlüter

Status : Alternate

Article 12: Shared competences

4. Shared competence applies in the following principal areas:

- internal market
 - area of freedom, security and justice
 - agriculture and fisheries
 - transport
 - trans-European networks
 - energy
 - social policy
 - economic and social cohesion
 - environment
 - ~~public health, and~~
 - consumer protection
 - food safety, and
animal welfare.
-

Explanation:

Union action in the field of **public health** cannot be considered shared competence as a whole. In fact, harmonisation is expressly excluded in most fields of Union action in this area. It would therefore be more correct, and furthermore in line with the recommendations of WG V, that public health be listed in Article 15 as an area where the Union can adopt supporting actions. Since it is expressly stated in Article 15 that “the scope of this competence is determined by the provisions of Part Two” the Union can still exercise its limited shared competence in the field of public health.

Due to their cross border nature **food safety** and **animal welfare** should be listed as principal areas of shared competence or in some other appropriate place in the Constitutional Treaty.