

AMENDMENT FORM

Suggestion for amendment of Article : 12

By Mr : František Kroupa

Status : Alternate

I very support the proposals by Mr. E. Brok involved in his contribution CONV 541/03 pages 8 –11 for the determination of the sphere of shared competences. I propose to insert these list of competences into Article 12.

Explanation (if any) :

FICHE AMENDEMENT

Proposition d'amendement à l'Article : I- 13

Déposée par Madame ou Monsieur : **M. Louis Michel, 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

Article I-13 : Les domaines de compétence partagée

1. L'Union dispose d'une compétence partagée avec les États membres lorsque la Constitution lui attribue une compétence qui ne relève pas des domaines visés aux articles I-12 et I-16.
2. Les compétences partagées entre l'Union et les États membres s'appliquent aux principaux domaines suivants :
 - le marché intérieur,
 - l'espace de liberté, de sécurité et de justice,
 - l'agriculture et la pêche, à l'exclusion de la conservation des ressources biologiques de la mer,
 - le transport et les réseaux transeuropéens,
 - l'énergie,
 - la politique sociale, pour des aspects définis à la Partie III,
 - la cohésion économique, sociale et territoriale,
 - l'environnement,
 - la protection des consommateurs,
 - ~~les enjeux communs de sécurité en matière de~~ **la santé publique.**
3. Dans les domaines de la recherche, du développement technologique et de l'espace, l'Union a une compétence pour mener des actions, notamment la définition et la mise en œuvre de programmes, sans que l'exercice de cette compétence puisse avoir pour effet d'interdire aux États membres d'exercer la leur.

4. Dans les domaines de la coopération au développement et de l'aide humanitaire, l'Union a une compétence pour entreprendre des actions et pour mener une politique commune, sans que l'exercice de cette compétence puisse avoir pour effet d'interdire aux États membres d'exercer la leur.

Explication éventuelle :

AMENDMENT FORM

Suggestion for amendment of Article :

By Ms / Mr :

Status : - Member - Alternate

| <u>Article I-13: Areas of shared competence</u> | <u>Article I-13: Areas of shared competence</u> |
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| <p>1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles I-12 and I-16.</p> <p>2. Shared competence applies in the following principal areas:</p> <ul style="list-style-type: none">– internal market,– area of freedom, security and justice,– agriculture and fisheries, excluding the conservation of marine biological resources,– transport and trans-European networks,– energy,– social policy, for aspects defined in Part Three,– economic, social and territorial cohesion,– environment,– consumer protection,– common safety concerns in public health matters. <p>3. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to define and implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising theirs.</p> <p>4. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member</p> | <p>1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles I-12 and I-16.</p> <p>2. Shared competence applies in the following principal areas:</p> <ul style="list-style-type: none">– internal market,– area of freedom, security and justice,– agriculture and fisheries, excluding the conservation of marine biological resources,– transport and trans-European networks,– energy,– social policy, for aspects defined in Part Three,– economic, social and territorial cohesion,– environment,– consumer protection,– common safety concerns in public health matters. <p>3. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to define and implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising theirs.</p> <p>4. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising theirs.</p> |

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| States being prevented from exercising theirs. | |
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Explanation (if any) : Taking in to account the dynamic character of the competences it is suggested to elaborate on each form of competence separately in Part III of the Treaty.

AMENDMENT FORM

Suggestion for amendment of Article : I-13

By Ms: Danuta Hübner

Status : - Member

| <u>Article I-13: Areas of shared competence</u> | <u>Article I-13: Areas of shared competence</u> |
|--|---|
| <p>1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles I-12 and I-16.</p> <p>2. Shared competence applies in the following principal areas:</p> <ul style="list-style-type: none">– internal market,– area of freedom, security and justice,– agriculture and fisheries, excluding the conservation of marine biological resources,– transport and trans-European networks,– energy,– social policy, for aspects defined in Part Three,– economic, social and territorial cohesion,– environment,– consumer protection,– common safety concerns in public health matters. <p>3. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to define and implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising theirs.</p> <p>4. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member</p> | <p>1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles I-12 and I-16.</p> <p>2. Shared competence applies in the following principal areas:</p> <ul style="list-style-type: none">– internal market,– area of freedom, security and justice,– agriculture and fisheries, excluding the conservation of marine biological resources,– transport and trans-European networks,– energy,– social policy, for aspects defined in Part Three,– economic, social and territorial cohesion,– environment,– consumer protection,– common safety concerns in public health matters. <p>3. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to define and implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising theirs.</p> <p>4. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising theirs.</p> |

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| States being prevented from exercising theirs. | |
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Explanation (if any) : Taking in to account the dynamic character of the competences it is suggested to elaborate on each form of competence separately in Part III of the Treaty.

AMENDMENT FORM

Suggestion for amendment of Article : I-13

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

Status : - Member - ~~Alternate~~

Artikel I-13: ~~Bereiche mit geteilter Zuständigkeit~~ *Geteilte Zuständigkeiten*

(1) Die Union teilt ihre Zuständigkeit mit den Mitgliedstaaten, wenn ihr die Verfassung eine Zuständigkeit für nicht in den Artikeln I-12 und I-16 genannte Bereiche zuweist.

(2) Die Union und die Mitgliedstaaten teilen sich ihre Zuständigkeit *insbesondere* in folgenden Bereichen:

- Binnenmarkt,
- Raum der Freiheit, der Sicherheit und des Rechts,
- Landwirtschaft und Fischerei, ausgenommen die Erhaltung der biologischen Meeresschätze,
- Verkehr und transeuropäische Netze,
- Energie,
- Sozialpolitik ~~hinsichtlich der in Teil III genannten Aspekte,~~
- ***Gleichstellung der Geschlechter und Nichtdiskriminierung,***
- wirtschaftlicher, sozialer und territorialer Zusammenhalt,
- Umwelt,
- Verbraucherschutz,
- Sicherheitsmaßnahmen von gemeinsamem Interesse im Bereich des Gesundheitswesens,
- ***Tierschutz.***

(3) In den Bereichen Forschung, technologische Entwicklung und Raumfahrt ist die Union für die Durchführung von Maßnahmen, insbesondere die Festlegung und Durchführung von Programmen zuständig, ohne dass diese Ausübung der Zuständigkeit der Union den Mitgliedstaaten die Ausübung ihrer Zuständigkeiten verwehrt.

(4) In den Bereichen Entwicklungszusammenarbeit und humanitäre Hilfe ist die Union für die Durchführung von Maßnahmen und die Gestaltung einer gemeinsamen Politik zuständig, ohne dass diese Ausübung der Zuständigkeit der Union den Mitgliedstaaten die Ausübung ihrer Zuständigkeiten verwehrt.

(5) *Im Bereich des Binnenmarktes kann die Union Wettbewerbsregeln festlegen, ohne dass*

diese Ausübung der Zuständigkeit der Union den Mitgliedstaaten die Ausübung ihrer Zuständigkeiten verwehrt.

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.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 13 point 2

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

- **Membre:** Alberto Costa, Maria Eduarda Azevedo
 - **Suppléant:** Guilherme d'Oliveira Martins
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Article 13

Les compétences partagées

2. Les compétences partagées entre l'Union et les États membres s'appliquent aux principaux domaines suivants:
 - le marché intérieur et ses **aspects fiscaux**

AMENDMENT FORM

Suggestion for amendment of Article I-13, para 2:

By BROK, SZAJER, AKCAM, VAN DER LINDEN, BREJC, DEMETRIOU, FIGEL, LIEPINA, SANTER, KELAM, KROUPA, ALMEIDA GARRETT, ALTMAIER, KAUPPI, LENNMARKER, MAIJ-WEGGEN, RACK, VILEN, WÜRMELING

on behalf of the EPP Convention Group

Status :

Suggestion

Article I-13: Areas of shared competences

2. Shared competence applies in the following principal areas:

- internal market,
- area of freedom, security and justice,
- agriculture and fisheries, excluding the conservation of marine biological resources,
- transport and trans-European networks,
- energy,
- social policy, for aspects defined in Part Three,
- economic and social cohesion,
- environment,
- consumer protection,
- ~~the combating of common safety concerns in public health matters~~ **threats of a significant cross-border nature.**

Explanation:

- *The **shared competence on public health** appears to be too broad and vague to be sufficiently distinguished from the supporting competence under Article I-16.2. The sole intention of this shared competence should be to enable the Union to combat cross-border public health threats (e.g. SARS). We would also draw the attention of the Praesidium to the fact that there is **no counterpart to this new shared competence in Part Three of the Constitution**. For the moment, the supporting competence under Article I-16.2 is implemented by Article 174 (ex-Article 152 EC), which rightly does not allow for superseding national competences. If the new shared competence on public health threats was to be maintained, there would have to be a clearly defined operative clause in Part Three, which would need to be discussed in the Convention.*

AMENDMENT FORM

Suggestion for amendment of Article :I-13, §2

By ~~Ms~~/ Mr : Danny PIETERS

Status : - ~~Member~~ - Alternate

Delete the latest changes in this paragraph and return to the original version. This means delete « for aspects defined in Part Three » when dealing with social policy and return to « public health » instead of « common safety concerns in public health matters »

Explanation (if any) :

The reasons for adding « for aspects defined in Part Three » and for changing « public health » into « common safety concerns in public health matters » are far from convincing. In fact this reasoning could be repeated for all other items of §2. The changes proposed now also undermine the clarity and accessibility of the text. It also suggests a different approach in these areas, which is not the case. The changes were inspired by political byasses. I therefor strongly recommend to return to the orginal text.

AMENDMENT FORM

Title III: Union Competences

Suggestion for amendment of Article : Article I-13: Areas of shared competence

By Members: Mr Andrew Duff, Mr Lamberto Dini, Mr Paul Helminger, Mr Rein Lang, Lord MacLennan

Article I-12: Areas of shared competence

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles I-15 and I-16.

2. Shared competence applies in the following principal areas:

- internal market,
- area of freedom, security and justice,
- agriculture and fisheries, excluding the conservation of marine biological resources,
- transport and trans-European networks,
- energy,
- *social policy*,
- economic, social and territorial cohesion,
- environment,
- consumer protection,
- common safety concerns in public health matters.

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Explanation:

This Article is renumbered to precede exclusive competences.

We propose the removal of the qualification to social policy. All these items are subject to definition in Part III. To distinguish social policy indicates a serious political ambivalence about its inclusion as a shared competence in the first place.

AMENDMENT FORM

PART I, TITLE III: UNION COMPETENCES - REVISED TEXT

Amendment of Article I-13: Areas of shared competence

By: M.J.CHABERT
M.M.DAMMEYER
M.P.DEWAEL
Ms. C.du GRANRUT
M.C.MARTINI
M. R.VALCARCEL SISO

Status : - ~~Member~~ - ~~Alternate~~ — - Observer

"SHARED COMPETENCES"

– Addition to Article I-13 aliéna 2:

- ...

- transfrontier cooperation

- ...

FICHE AMENDEMENT 4 (FINAL)

Proposition d'amendement à l'Article : I-13

Déposée par Madame ou Monsieur : Borrell, Carnero y López Garrido

Qualité : - Membre - Suppléant

2....

- política social y **empleo**, en lo relativo a los aspectos definidos en la Parte III

...

- aspectos comunes de seguridad en materia de salud pública

- **igualdad entre el hombre y la mujer**

- **lucha contra la discriminación.**

Explication éventuelle :

FICHE AMENDEMENT

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| Proposition d'amendement à l'Article: | I-13 |
| Déposée par Monsieur: | Erwin Teufel |
| Qualité: | Membre |

Texte du Praesidium

- (2) Die Union und die Mitgliedstaaten teilen sich ihre Zuständigkeit in folgenden Bereichen:
- Binnenmarkt,
 - Raum der Freiheit, der Sicherheit und des Rechts,
 - Landwirtschaft und Fischerei, ausgenommen die Erhaltung der biologischen Meeresschätze,
 - Verkehr und transeuropäische Netze,
 - Energie,
 - Sozialpolitik hinsichtlich der in Teil III genannten Aspekte,
 - wirtschaftlicher, sozialer und territorialer Zusammenhalt,
 - Umwelt,
 - Verbraucherschutz,
 - gemeinsame Sicherheitsanliegen im Bereich des Gesundheitswesens.

Amendement proposé

- (2) Die Union und die Mitgliedstaaten teilen sich ihre Zuständigkeit in folgenden Bereichen:
- Binnenmarkt,
 - Raum der Freiheit, der Sicherheit und des Rechts,
 - Landwirtschaft und Fischerei, ausgenommen die Erhaltung der biologischen Meeresschätze,
 - Verkehr und transeuropäische Netze,
 - **nukleare** Energie,
 - Sozialpolitik ~~hinsichtlich der in Teil III~~ **genannten Aspekte**,
 - wirtschaftlicher, sozialer und territorialer Zusammenhalt,
 - Umwelt,
 - Verbraucherschutz,
 - gemeinsame **grenzüberschreitende** Sicherheitsanliegen im Bereich des Gesundheitswesens.

Begründung:

Im Bereich „Energie“ sollte nur die nukleare Energie zu den geteilten Zuständigkeiten gerechnet werden. Für den nicht nuklearen Bereich besteht keine Einzelermächtigung im Vertrag. Eine solche

darf auch nicht geschaffen werden. Der Auftrag des Nizza-Vertrages an den Konvent (Erklärung zur Zukunft der Union, Ziffer 5) lautet: „eine Vereinfachung der Verträge mit dem Ziel, diese klarer und verständlicher zu machen, ohne sie inhaltlich zu ändern.“

Bei der Sozialpolitik ist der Verweis auf Teil III zwar zutreffend, sollte aber wegen der identischen Regelung des Art. I-11 Abs. 6 entfallen, um Missverständnisse zu vermeiden.

Der Änderungsvorschlag zum Bereich des Gesundheitswesens macht deutlich, dass gemeinsame Sicherheitsanliegen bei grenzüberschreitenden Sachverhalten vorliegen.

AMENDMENT FORM

Suggestion for amendment of Article 13 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-13: Areas of shared competence

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles I-12 and I-16.
2. Shared competence applies in the following principal areas:
 - internal market,
 - area of freedom, security and justice,
 - agriculture and fisheries, excluding the conservation of marine biological resources,
 - transport and trans-European networks,
 - energy,
 - social policy, for aspects defined in Part Three,
 - economic and social cohesion,
 - environment,
 - consumer protection,
 - ~~common~~ safety concerns in public health matters **at Union level**.
3. ~~In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to define and implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising theirs.~~
4. ~~In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising theirs.~~

Explanation (if any) :

For systemic reasons there should be no areas of Union action which hover between the category of shared competence and the category of supporting action. Accordingly and since their central characteristics are closer to other areas currently found under Article 16, the areas referred to in paragraphs 3 and 4 should be placed under that article.

AMENDMENT FORM

Suggestion for amendment of Article : I-13

By Mr : Joschka Fischer

Status : - Member

Artikel I-13: Bereiche mit geteilter Zuständigkeit

(1) Die Union hat eine mit den Mitgliedstaaten geteilte Zuständigkeit, wenn ihr die Verfassung außerhalb der in den Artikeln I-12 und I-16 genannten Bereiche eine Zuständigkeit zuweist.

(2) Die geteilte Zuständigkeit erstreckt sich auf die folgenden Hauptbereiche:

- Binnenmarkt, einschließlich Festlegung der Wettbewerbsregeln,
- Raum der Freiheit, der Sicherheit und des Rechts,
- Landwirtschaft und Fischerei, ausgenommen die Erhaltung der biologischen Meeresschätze,
- Verkehr und transeuropäische Netze,
- ~~Energie,~~
- Sozialpolitik hinsichtlich der in Teil III genannten Aspekte,
- ~~wirtschaftlicher und sozialer Zusammenhalt,~~
- Umwelt,
- Verbraucherschutz,
- Sicherheitsmaßnahmen von gemeinsamem Interesse im Bereich des Gesundheitswesens.

(3) In den Bereichen Forschung, technologische Entwicklung und Raumfahrt hat die Union eine Zuständigkeit, Maßnahmen zu treffen und insbesondere Programme zu erstellen und durchzuführen, ohne dass ihre Ausübung die Mitgliedstaaten daran hindert, ihre Zuständigkeiten ausüben.

(4) In den Bereichen Entwicklungszusammenarbeit und humanitäre Hilfe hat die Union eine Zuständigkeit, Maßnahmen zu treffen und eine gemeinsame Politik zu verfolgen, ohne dass ihre Ausübung die Mitgliedstaaten daran hindert, ihre Zuständigkeiten ausüben.

Explanation (if any) :

Die Wettbewerbsregeln im Binnenmarkt gehören zu den geteilten Kompetenzen zwischen der Union und den Mitgliedstaaten (s. auch Erläuterung zu Artikel 12).

Zur Frage der Schaffung eines eigenen Energieartikels gibt es im Konvent, aufgrund unterschiedlicher energiepolitischer Ausrichtungen in den Mitgliedstaaten, strittige Sichtweisen, die in der Kürze der verbleibenden Zeit nicht zufriedenstellend gelöst werden können. Auf die Ausarbeitung eines gesonderten Energieartikels, das über den gemeinschaftlichen Besitzstand hinausgeht sollte daher verzichtet werden. Etwaige energiepolitische Fragen sollten auch weiterhin im Rahmen des gemeinschaftlichen Besitzstandes geregelt werden.

Wirtschaftlicher und sozialer Zusammenhalt: Die Union hat hier lediglich unterstützende Aufgaben. In der Strukturpolitik ergibt sich dies aus dem heutigen Art. 159 Abs. 1 Satz 3 EGV, der explizit von der unterstützenden Rolle der Gemeinschaft spricht. Dieser Artikel sollte richtigerweise in Art. III-112 unverändert übernommen werden. Der wirtschaftliche und soziale Zusammenhalt sollte damit in die Liste des Art. I-16 aufgenommen werden.

AMENDMENT FORM

Suggestion for amendment of Article : I-13

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

Status :

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

3. In the areas of research, **and** technological development ~~and space~~,¹ the Union shall have competence to carry out actions, in particular to define and implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising theirs.

¹ A successful European space co-operation does already exist in the form of ESA, The European Space Agency. We question the necessity of having space cooperation also within the European Union.

AMENDMENT FORM

Suggestion for amendment of Article I-13, para 2:

By Mrs. Marietta GIANNAKOU

Status : Member

Suggestion

Article I-13: Areas of shared competences

2. Shared competence applies in the following principal areas:

- internal market,
- area of freedom, security and justice, **including asylum, immigration policy, judicial cooperation in civil and criminal matters, approximation of criminal rules and policy cooperation, in particular to combat organised crime**
- agriculture and fisheries, ~~excluding the conservation of marine biological resources,~~ **including animal protection**
- transport and trans-European networks,
- energy,
- social policy, for aspects defined in Part Three,
- economic and social cohesion,
- environment,
- **intellectual property,**
- consumer protection,
- ~~common safety concerns in public health matters~~
- **fight against drugs and**
- **the prevention of and fight against fraud affecting the financial interests of the Union**

Explanation:

AMENDMENT FORM

Suggestion for amendment of Article : 13(2)

Suggestion for Part I

By Ms / Mr : G.M. de Vries
 T.J.A.M. de Bruijn

Status : Members Alternate

2. Shared competence applies in the following principal areas:

- internal market,
 - ~~area of freedom, security and justice,~~
 - agriculture and fisheries, excluding the conservation of marine biological resources,
 - transport and trans-European networks,
 - ~~energy,~~
 - social policy, for aspects defined in Part Three,
 - economic and social cohesion,
 - environment,
 - consumer protection,
 - common safety concerns in public health matters.
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Explanation (if any): The deleted categories (area of freedom, security and justice and energy) should be supporting, coordinating or complementary action. The Netherlands has suggested a separate mention of the area of freedom security and justice in article I-11 (annex).

Annex:

Text suggestion, to be inserted in article I-11

6. The Union and the Member States shall have competence in the area of freedom, security and justice, as defined in part II of this Constitution, to legislate and take coordinating or supporting action however, the exercise of that competence may not result in Member States being prevented from exercising their competence.

AMENDMENT FORM

Suggestion for amendment of Article : I-13

By Mr : Hain

Status : - Member -

1. OK.

2. Shared competence applies in particular in the following principal areas defined in Part III:

- internal market,
- competition policy
- area of freedom, security and justice,
- agriculture and fisheries, excluding the conservation of marine biological resources,
- transport ~~and trans-European networks~~,
- energy,
- social policy, ~~for aspects defined in Part Three~~,
- economic and social cohesion,
- environment,
- ~~consumer protection~~,
- common safety concerns in public health matters.

3. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to define and implement programmes; however, the exercise of that competence ~~may~~ shall not result in Member States being prevented from exercising theirs notwithstanding the provisions of article I-12(2).

Explanation (if any) :

2. Repeated amendment: This Article should make clear that the list of shared competences is illustrative, not exhaustive. Some of these policies, such as but not only social policy, encompass both shared competence and supporting action. Our amendment signals that the reader should rely on the detail in Part III (although this may not be necessary as this point is made in paragraph 6 of Article 11). We have also added 'in particular' to make clear that this is an illustrative list. We have added competition policy here as it is a shared, not exclusive competence. Energy is explicitly referred to here for the first time. Trans-European networks (excluding inter-operability of networks) and consumer protection are supporting actions, not shared competences.

3. New amendment: These amendments remove a potential ambiguity.

FICHE AMENDEMENT

Proposition d'amendement à l'Article: Artikel I-13: Bereiche mit geteilter Zuständigkeit

Déposée par Monsieur: **Joachim Wuermeling**

Qualité: **Suppléant**

| <i>Texte du Praesidium</i> | <i>Amendement proposé</i> |
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| <p>(1) Die Union hat eine mit den Mitgliedstaaten geteilte Zuständigkeit, wenn ihr die Verfassung außerhalb der in den Artikeln I-12 und I-16 genannten Bereiche eine Zuständigkeit zuweist.</p> <p>(2) Die geteilte Zuständigkeit erstreckt sich auf die folgenden Hauptbereiche:</p> <ul style="list-style-type: none">– Binnenmarkt,– Raum der Freiheit, der Sicherheit und des Rechts,– Landwirtschaft und Fischerei, ausgenommen die Erhaltung der biologischen Meeresschätze,– Verkehr und transeuropäische Netze,– Energie,– Sozialpolitik hinsichtlich der in Teil III genannten Aspekte,– wirtschaftlicher und sozialer Zusammenhalt,– Umwelt,– Verbraucherschutz,– Sicherheitsmaßnahmen von gemeinsamem Interesse im Bereich des Gesundheitswesens. | <p>(1) Die Union hat eine mit den Mitgliedstaaten geteilte Zuständigkeit, wenn ihr die Verfassung außerhalb der in den Artikeln I-12 und I-16 genannten Bereiche eine Zuständigkeit zuweist.</p> <p>(2) Die geteilte Zuständigkeit erstreckt sich auf die folgenden Hauptbereiche:</p> <ul style="list-style-type: none">– Binnenmarkt,– Raum der Freiheit, der Sicherheit und des Rechts,– Landwirtschaft und Fischerei, ausgenommen die Erhaltung der biologischen Meeresschätze,– Verkehr und transeuropäische Netze,– Energie,– Sozialpolitik, hinsichtlich der in Teil III genannten Aspekte,– wirtschaftlicher und sozialer Zusammenhalt,– Umwelt,– Verbraucherschutz,– Sicherheitsmaßnahmen von gemeinsamem Interesse im Bereich des Gesundheitswesens. |

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| <p>(3) In den Bereichen Forschung, technologische Entwicklung und Raumfahrt hat die Union eine Zuständigkeit, Maßnahmen zu treffen und insbesondere Programme zu erstellen und durchzuführen, ohne dass ihre Ausübung die Mitgliedstaaten daran hindert, ihre Zuständigkeiten ausüben.</p> <p>(4) In den Bereichen Entwicklungszusammenarbeit und humanitäre Hilfe hat die Union eine Zuständigkeit, Maßnahmen zu treffen und eine gemeinsame Politik zu verfolgen, ohne dass ihre Ausübung die Mitgliedstaaten daran hindert, ihre Zuständigkeiten ausüben.</p> | <p>(3) In den Bereichen Forschung, technologische Entwicklung und Raumfahrt hat die Union eine Zuständigkeit, Maßnahmen zu treffen und insbesondere Programme zu erstellen und durchzuführen, ohne dass ihre Ausübung die Mitgliedstaaten daran hindert, ihre Zuständigkeiten ausüben.</p> <p>(4) In den Bereichen Entwicklungszusammenarbeit und humanitäre Hilfe hat die Union eine Zuständigkeit, Maßnahmen zu treffen und eine gemeinsame Politik zu verfolgen, ohne dass ihre Ausübung die Mitgliedstaaten daran hindert, ihre Zuständigkeiten ausüben.</p> |
|--|--|

Begründung:

AMENDMENT FORM

Suggestion for amendment of Article : I-13 (2)

By Ms : Hanja Maij-Weggen

Status : - Member

Article 12: Shared competences

2. Shared competence applies in the following principal areas:

- internal market
- area of freedom, security and justice
- agriculture and fisheries, excluding the conservation of marine biological resources,
- transport and trans-European networks
- energy
- social policy, for aspects defined in Part Three,
- economic, social and territorial cohesion
- environment, *including animal protection*
- consumer protection
- common safety concerns in public health matters

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 12 (4)

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

Members Alberto Costa, Maria Eduarda Azevedo

Alternate Guilherme d'Oliveira Martins

Status :

Article 12

Shared competences

1. Shared competence between the Union and the Member States applies in the following principal areas:
 - internal market and its **fiscal aspects**

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 12, point 4

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

- **Membre:** Alberto Costa, Maria Eduarda Azevedo
 - **Suppléant:** Guilherme d'Oliveira Martins
-

Article 12

Les compétences partagées

1. Les compétences partagées entre l'Union et les États membres s'appliquent aux principaux domaines suivants:
 - le marché intérieur et ses **aspects fiscaux**

Explication éventuelle :

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Artigo 12, n.º3

Déposée par Monsieur : Luís QUEIRÓ

Qualité : Suppléant

3. Num domínio de competência partilhada, a União e os seus Estados-Membros exercem as respectivas competências no respeito pelo princípio da subsidiariedade, tal como definido no Artigo 8.º, n.º3.

Explication éventuelle :

Ver justificação apresentada à minha proposta n.21 relativa ao n.º 2, Artigo 10.º: a manutenção do texto original, representaria a perversão do princípio da subsidiariedade.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Article 12, paragraphe 3

Déposée par Monsieur : Luís QUEIRÓ

Qualité : Suppléant

3. Dans un domaine de compétence partagée, **l'Union et ses** Etats membres **exercent leurs compétences respectives dans le respect du principe de la subsidiarité, tel qu'il est défini dans l'article 8, paragraphe 3.**
-

Explication:

Le maintien du texte original représenterait la perversion du principe de la subsidiarité. (voir amendement 21)

FICHE AMENDEMENT

Proposition d'amendement à l'Article: 12

Déposée par Monsieur: Erwin Teufel

Qualité: Membre

Texte du Praesidium

- (1) Die Union verfügt über eine mit den Mitgliedstaaten geteilte Zuständigkeit, wenn ihr die Verfassung eine Zuständigkeit zuweist, die nicht die in den Artikeln 11 und 15 genannten Bereiche betrifft.
- (3) Die Mitgliedstaaten können ihre Zuständigkeit in einem Bereich geteilter Zuständigkeit dann ausüben, wenn die Union ihre Zuständigkeit nicht ausgeübt hat oder nicht mehr ausübt.
- (4) Eine zwischen der Union und den Mitgliedstaaten geteilte Zuständigkeit liegt in folgenden Hauptbereichen vor:
- Binnenmarkt
 - Raum der Freiheit, der Sicherheit und des Rechts
 - Landwirtschaft und Fischerei
 - Verkehr
 - transeuropäische Netze
 - Energie
 - Sozialpolitik
 - wirtschaftlicher und sozialer Zusammenhalt
 - Umwelt
 - Gesundheitswesen und

Amendement proposé

- (1) Die Union verfügt über eine mit den Mitgliedstaaten geteilte Zuständigkeit, wenn ihr die Verfassung eine Zuständigkeit zuweist, die nicht die in den Artikeln 11, **13, 14** und 15 genannten Bereiche betrifft.
- (3) **Soweit und so lange die Union ihre Zuständigkeit in einem Bereich geteilter Zuständigkeit ausübt, sind die Mitgliedstaaten zur Ausübung dieser Zuständigkeit nicht befugt.**
- (4) Eine zwischen der Union und den Mitgliedstaaten geteilte Zuständigkeit liegt in folgenden Hauptbereichen vor:
- Binnenmarkt
 - Raum der Freiheit, der Sicherheit und des Rechts
 - Landwirtschaft und Fischerei
 - Verkehr
 - transeuropäische Netze
 - **nukleare** Energie
 - Sozialpolitik
 - wirtschaftlicher und sozialer Zusammenhalt
 - Umwelt **und**
 - ~~Gesundheitswesen und~~

– Verbraucherschutz.

~~(5) In den Bereichen Forschung, technologische Entwicklung und Raumfahrt ist die Union für die Durchführung von Maßnahmen – insbesondere von Programmen – zuständig, ohne dass die Ausübung dieser Zuständigkeit zur Folge haben könnte, dass den Mitgliedstaaten die Ausübung ihrer Zuständigkeiten verwehrt ist.~~

~~(6) In den Bereichen Entwicklungszusammenarbeit und humanitäre Hilfe ist die Union für die Durchführung von Maßnahmen und die Gestaltung einer gemeinsamen Politik zuständig, ohne dass die Ausübung dieser Zuständigkeit zur Folge haben könnte, dass den Mitgliedstaaten die Ausübung ihrer Zuständigkeiten verwehrt ist.~~

– Verbraucherschutz.

~~(5) In den Bereichen Forschung, technologische Entwicklung und Raumfahrt ist die Union für die Durchführung von Maßnahmen – insbesondere von Programmen – zuständig, ohne dass die Ausübung dieser Zuständigkeit zur Folge haben könnte, dass den Mitgliedstaaten die Ausübung ihrer Zuständigkeiten verwehrt ist.~~

~~(6) In den Bereichen Entwicklungszusammenarbeit und humanitäre Hilfe ist die Union für die Durchführung von Maßnahmen und die Gestaltung einer gemeinsamen Politik zuständig, ohne dass die Ausübung dieser Zuständigkeit zur Folge haben könnte, dass den Mitgliedstaaten die Ausübung ihrer Zuständigkeiten verwehrt ist.~~

Begründung:

Abs. 1

Klarstellung, dass weder die „Koordinierung der Wirtschaftspolitik“ (Art. 13) noch die GASP (Art. 14) geteilte Zuständigkeiten sind.

Abs. 3

Diese Formulierung entspricht dem Prinzip der begrenzten Einzelermächtigung (Art. 8 Abs. 2), wonach die Zuständigkeiten grundsätzlich bei den Mitgliedstaaten liegen und der Union durch die Verfassung in Grenzen übertragen werden.

Abs. 4

Hinweis: Hier ist eine differenzierte Prüfung erforderlich, die ohne das Vorliegen des zweiten Teils des Verfassungsvertrags nicht möglich ist. Insbesondere sind Präzisierungen in den Bereichen Sozialpolitik, Binnenmarkt sowie wirtschaftlicher und sozialer Zusammenhalt

erforderlich.

Im Bereich „Energie“ sollte nur die nukleare Energie zu den geteilten Zuständigkeiten gerechnet werden. Für den nicht nuklearen Bereich besteht keine Einzelermächtigung im Vertrag. In jedem Fall muss die Gesundheitspolitik in den Bereich der ergänzenden Zuständigkeiten überführt werden. Die Regelung des Gesundheitswesens in Art. 152 EG-Vertrag weist diesen Bereich als unterstützende Maßnahme aus. Der Auftrag des Nizza-Vertrages an den Konvent (Erklärung zur Zukunft der Union, Ziffer 5) lautet: „eine Vereinfachung der Verträge mit dem Ziel, diese klarer und verständlicher zu machen, ohne sie inhaltlich zu ändern.“

Abs. 5 und 6

Abs. 5 und 6 sollten gestrichen werden und in Art. 15 als ergänzende Zuständigkeit aufgenommen werden. Es ist kein Unterschied zu den ergänzenden Zuständigkeiten erkennbar. Im Sinne der Klarheit und Knappheit des Verfassungstextes sollte auf neue Kompetenzkategorien verzichtet werden.

FICHE AMENDEMENT

Proposition d'amendement à l'Article: 12

Déposée par Monsieur: Erwin Teufel

Qualité: Membre

Texte du Praesidium

Amendement proposé

- | | |
|---|--|
| (1) L'Union dispose d'une compétence partagée avec les Etats membres lorsque la Constitution lui attribue une compétence qui ne relève pas des domaines visés aux articles 11 et 15. | (1) L'Union dispose d'une compétence partagée avec les Etats membres lorsque la Constitution lui attribue une compétence qui ne relève pas des domaines visés aux articles 11, 13, 14 et 15. |
| (3) Lorsque l'Union n'a pas exercé ou cesse d'exercer sa compétence dans un domaine de compétence partagée, les Etats membres peuvent exercer la leur. | (3) Dans la mesure où et tant que l'Union n'exerce pas sa compétence dans un domaine de compétence partagée, les Etats membres n'ont pas le pouvoir d'exercer cette compétence. |
| (4) Les compétences partagées entre l'Union et les Etats membres s'appliquent aux principaux domaines suivants: <ul style="list-style-type: none">– le marché intérieur– l'espace de liberté, de sécurité et de justice– l'agriculture et la pêche– les transports– les réseaux transeuropéens– l'énergie– la politique sociale– la cohésion économique et sociale– l'environnement– la santé publique, et | (4) Les compétences partagées entre l'Union et les Etats membres s'appliquent aux principaux domaines suivants: <ul style="list-style-type: none">– le marché intérieur– l'espace de liberté, de sécurité et de justice– l'agriculture et la pêche– les transports– les réseaux transeuropéens– l'énergie nucléaire– la politique sociale– la cohésion économique et sociale– l'environnement, et— la santé publique, et |

– la protection des consommateurs.

– la protection des consommateurs.

5. Dans les domaines de la recherche, du développement technologique et de l'espace, l'Union a une compétence pour mener des actions, notamment la mise en œuvre de programmes, sans que l'exercice de cette compétence puisse avoir pour effet d'interdire aux Etats membres d'exercer les leurs.

~~5. Dans les domaines de la recherche, du développement technologique et de l'espace, l'Union a une compétence pour mener des actions, notamment la mise en œuvre de programmes, sans que l'exercice de cette compétence puisse avoir pour effet d'interdire aux Etats membres d'exercer les leurs.~~

6. Dans les domaines de la coopération au développement et de l'aide humanitaire, l'Union a une compétence pour entreprendre des actions et pour mener une politique commune, sans que l'exercice de cette compétence puisse avoir pour effet d'interdire aux Etats membres d'exercer les leurs.

~~6. Dans les domaines de la coopération au développement et de l'aide humanitaire, l'Union a une compétence pour entreprendre des actions et pour mener une politique commune, sans que l'exercice de cette compétence puisse avoir pour effet d'interdire aux Etats membres d'exercer les leurs.~~

Explication:

al. 1

Ni la « coordination des politiques économiques » (art. 13) ni la politique étrangère et de sécurité commune (art. 14) sont des compétences partagées.

al. 3

Ce texte correspond au principe d'attribution (Art. 8, deuxième alinéa) selon lequel les compétences appartiennent en principe aux Etats membres et sont conférées à l'Union par la Constitution dans certaines limites.

al. 4

Il faut examiner plus précisément la liste des compétences partagées ce qui n'est pas possible sans connaître la deuxième partie du Traité constitutionnel. Dans le domaine de l'énergie seulement l'énergie nucléaire appartient aux compétences partagées. Il n'existe pas d'attribution spéciale de

l'Union dans le TCE pour l'énergie non nucléaire. En tous cas, la santé publique devra être transférée dans le domaine d'action d'appui. Les dispositions de la santé publique visées à l'article 152 du Traité CE qualifient ce domaine comme action d'appui. Le mandat conféré à la Convention par le Traité de Nice est de « simplifier les traités afin qu'ils soient plus clairs et mieux compris, sans en changer le sens » (Déclaration sur l'avenir de l'Union, paragraphe 5).

al. 5 et 6

Les alinéas 5 et 6 devraient être rayés et transférés dans les domaines d'actions d'appui. On ne voit pas de différence avec ces domaines. Il faut renoncer de créer de nouvelles catégories de compétences afin de tenir le texte de la Constitution clair et court.

Proposition d'amendement à l'Article 12, par. 4

Déposée par Madame Elena Paciotti et Monsieur Valdo Spini, Suppléants

IT Version

Articolo 12: Competenze condivise

4. Le competenze condivise tra l'Unione e gli Stati membri *riguardano le* seguenti *politiche*:

- *la piena attuazione del* mercato interno *e le misure fiscali necessarie a tal fine*
 - *la promozione dei servizi di interesse generale*
 - lo spazio di libertà, sicurezza e giustizia
 - *la promozione della parità tra donne e uomini*
 - *le misure in materia di* agricoltura e pesca
 - *la promozione dei* trasporti
 - *la creazione di* reti transeuropee
 - *la politica energetica*
 - *la politica industriale*
 - la politica sociale *e dell'occupazione*
 - *le misure di* coesione economica, sociale *e territoriale*
 - *la politica* ambientale
 - la sanità pubblica
 - la protezione dei consumatori
-

Explication éventuelle:

Le competenze condivise riguardano essenzialmente le politiche destinate ad attuare gli obiettivi dell'Unione.

Proposition d'amendement à l'Article 12, par. 4

Déposée par Madame Elena Paciotti et Monsieur Valdo Spini, Suppléants

EN Version

Article 12: Shared competencies

4. Shared competence *applies to the following policy areas:*

- *full implementation of* the internal market and *the appropriate fiscal measures to achieve this end*
- *promotion of general interest services*
- area of freedom, security and justice
- *promotion of equality between women and men*
- *measures involving* agriculture and fisheries
- *promotion of* transport
- *creation of* trans-European networks
- *energy policy*
- *industrial policy*
- *social and employment policies*
- *measures involving* economic and social cohesion
- *environmental policies*
- public health
- consumer protection.

Explication éventuelle:

Shared competencies essentially involve policies for implementing the objectives of the Union.

AMENDMENT FORM

Suggestion for amendment of Article : 12 (6)

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 12

Shared competences

6. In the areas of development cooperation, **economic, financial and technical cooperation with third countries** and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 12, point 6

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 12

Les compétences partagées

6. Dans les domaines de la coopération au développement, **de la coopération économique, financière et technique avec les pays tiers** et de l'aide humanitaire, l'Union a une compétence pour entreprendre des actions et pour mener une politique commune, sans que l'exercice de cette compétence puisse avoir pour effet d'interdire aux Etats membres d'exercer les leurs.
- .

AMENDMENT FORM**Suggestion for amendment of Article 12:****By Mr Georges Jacobs - UNICE****Status: observer***Text of the Praesidium**Proposed Amendments***Article 12: Shared competences**

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 11 and 15 .

2. The scope of shared competences is determined by the provisions of Part Two.

3. Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.

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

Article 12: Shared competences

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 11 and 15 .

2. The scope of shared competences is determined by the provisions of Part Two.

3. Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.

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

- environment
- public health, and
- consumer protection.

- ~~— public health, and~~
- consumer protection.

5. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.
 6. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.
5. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.
 6. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.

Explanation:

Public health should not become a shared competence but remain an area of supporting action.

Withdrawal of energy from Art 12. is based on the following considerations:

- **lack of clarity in the definition of shared competence.**
- **uncertainties created regarding the possibility for Member States to face their responsibilities adequately regarding energy policy.**
- **more information needed on the planned energy legal basis. A legal basis granting special status to energy products, divorcing them from the general legislation and leading to an excess of rules and rigidities would be problematic.**
- **an exclusive competence for the internal energy market already exists in art.11**

UNICE's position on energy might develop in the light of the future Convention work.

AMENDMENT FORM

Suggestion for amendment of Article : 12

By Ms / Mr : Marie Nagy

Status : - Member - Alternate

Article 12: Shared competences

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 11 and 15 .
2. The scope of shared competences is determined by the provisions of Part Two.
3. Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.
4. Shared competence applies in the following principal areas:

~~—— internal market~~

- judicial cooperation in civil matters

- police cooperaton and judicial cooperation in penal matters

~~—— area of freedom, security and justice~~

- agriculture and fisheries
- transport
- trans-European networks
- **sustainable energy (*falls under current Art. 174 of the ECT*)**
- **health, safety and protection of the environment from nuclear installations (*falls under current Art. 174 of the ECT*)**
- **nuclear safeguards and non-proliferation (*may require the creation of a specific legal basis for that area in Part III of the Constitution as there might not be such legal basis in the current EC/EU Treaties*)**
- social policy

- economic and social cohesion
- environment
- public health, and
- consumer protection.
- **Animal protection**
- **economic policy**
- **employment policy**
- **research policy**
- **development cooperation and humanitarian aid**
- **industry**

~~5. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.~~

~~6. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.~~

Explanation (if any) :

FICHE AMENDEMENT

Proposition d'amendement à l'Article 12

Déposée par Monsieur Dominique de Villepin

Qualité : Membre

Article 12: Les domaines de compétences partagées

1. L'Union dispose d'une compétence partagée avec les Etats membres lorsque la Constitution lui attribue une compétence qui ne relève pas des domaines visés aux articles 11, 13, 14 et 15.
 2. L'étendue des compétences partagées de l'Union est déterminée par les dispositions de la Partie II.
 3. **suppression**
 4. **suppression**
 5. **suppression**
 6. **suppression**
-

Explication éventuelle :

AMENDMENT FORM

Suggestion for amendment of Article : 12.4

By Lord Tomlinson

Status :- Alternate

Delete

Explanation (if any) :

To have wording which too much represents a catalogue of competences in a category which is by its very nature a residual category and should not therefore be listed is bad enough. For such a list to be not exhaustive but only indicative makes the worst of a bad job.

AMENDMENT FORM

Suggestion for amendment of Article : 12.3

By Lord Tomlinson

Status :- Alternate

Delete

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 12.2

By Lord Tomlinson

Status :- Alternate

Delete

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article 12

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

Status: **Members and alternate member.**

Article 12: Shared competences

12.1 ***In accordance with Article 10.2,*** the Union shall share competence with the Member States ***in the following principal areas:***

12.2 *Delete.*

12.3 *Delete.*

12.4 *(8 words deleted)*

- ***fiscal aspects of the*** internal market
- area of freedom, security and justice
- transport
- trans-European networks
- energy
- social ***and employment*** policy
- economic and social cohesion
- environment
- public health
- consumer protection
- ***research and technological development***
- ***development cooperation and humanitarian aid.***

12.5 *Delete*

12.6 *Delete*

Explanation:

12.1 The explanation of this category has already appeared in Article 10.2, allowing us to re-draft this Article in a clearer and shorter version.

12.2 This has already been covered in Article 10.6. It is confusing and unnecessary to repeat it here with slightly different wording.

12.3 This has already been covered in Article 10.2. It is confusing and unnecessary to repeat it here with slightly different wording.

12.4 To accord with Article 11.1 the fiscal aspects of the internal market feature here.

If the internal market can be assumed to be an exclusive competence, as we have suggested, the Common Agricultural Policy and Common Fisheries Policy, being intrinsic parts of the single market regime, should be dropped from this list.

Employment policy is added to social policy as a shared competence. The existing formulations of the Treaty of Amsterdam on employment policy are possibly the worst examples of treaty drafting we have yet seen in the history of the Union. Many members, from all quarters, of the Convention have expressed themselves in favour of more "delivery on jobs". The citizen expects more action from the Union in this field.

The Praesidium has given both research and technological development and development cooperation and humanitarian aid their own special category of shared competence (Articles 12.5 and 12.6) on the grounds that Member States may not be prevented from exercising their own competence in parallel to that of the Union. In other words, there is the concept of active partnership between the EU and national levels in these sectors.

The way that the Constitution treats all shared competences should be standardised. We propose the deletion of Articles 12.5 and 12.6, and the inclusion of these two policy fields alongside the other shared competences in Article 12.4.

The Union already has ample experience of implementing current policies in these two areas, and of achieving the necessary degree of cooperation in practice. Moreover, the concept of parallel action is also present in all the other fields specified in Article 12.4 and it is not clear why the old formulations of the existing Treaty of Rome should now be maintained. 'Shared competences' are by definition to be shared.

If special forms of partnership are really required in R & D and development cooperation, these can be laid down in Part Two.

AMENDMENT FORM

Suggestion for amendment of Article : 12

By Ms / Mr : Johannes Voggenhuber, Eva Lichtenberger

Status : - Member - Alternate

Article 12: Shared competences

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 11 and 15 .
2. The scope of shared competences is determined by the provisions of Part Two.
3. Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.
4. Shared competence applies in the following principal areas:

—— ~~internal market~~

- judicial cooperation in civil matters

- police cooperaton and judicial cooperation in penal matters

—— ~~area of freedom, security and justice~~

- agriculture and fisheries
- transport
- trans-European networks
- **sustainable energy** (*falls under current Art. 174 of the ECT*)
- **health, safety and protection of the environment from nuclear installations** (*falls under current Art. 174 of the ECT*)
- **nuclear safeguards and non-proliferation** (*may require the creation of a specific legal basis for that area in Part III of the Constitution as there might not be such legal basis in the current EC/EU Treaties*)

- social policy
- economic and social cohesion
- environment
- public health, and
- consumer protection.
- **Animal protection**
- **economic policy**
- **employment policy**
- **research policy**
- **development cooperation and humanitarian aid**
- **industry**

~~5. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.~~

~~6. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.~~

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 12 §5

By Mr : Joachim Wuermeling and Peter Altmaier

Status : - Alternates

~~(5) In den Bereichen Forschung, technologische Entwicklung und Raumfahrt ist die Union für die Durchführung von Maßnahmen – insbesondere von Programmen – zuständig, ohne dass die Ausübung dieser Zuständigkeit zur Folge haben könnte, dass den Mitgliedstaaten die Ausübung ihrer Zuständigkeiten verwehrt ist.~~

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 12 §4

By Mr : Joachim Wuermeling and Peter Altmaier

Status : - Alternates

(4) Eine zwischen der Union und den Mitgliedstaaten geteilte Zuständigkeit liegt in folgenden Hauptbereichen vor:

- ...
 - Umwelt *und*
 - ~~*Gesundheitswesen und*~~
 - Verbraucherschutz.
-

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 12 §4

By Mr : Joachim Wuermeling and Peter Altmaier

Status : - Alternates

(4) Eine zwischen der Union und den Mitgliedstaaten geteilte Zuständigkeit liegt in folgenden Hauptbereichen vor:

— ...

~~— *Energie*~~

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 12 §4

By Mr : Joachim Wuermeling and Peter Altmaier

Status : - Alternates

(4) Eine zwischen der Union und den Mitgliedstaaten geteilte Zuständigkeit liegt in folgenden Hauptbereichen vor:

- *Angleichung der Rechts- und Verwaltungsvorschriften im* Binnenmarkt
 - ...
-

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 12 §3

By Mr : Joachim Wuermeling and Peter Altmaier

Status : - Alternates

(3) Die Mitgliedstaaten können ihre Zuständigkeit in einem Bereich geteilter Zuständigkeit dann ausüben, ~~wenn~~ *soweit* die Union ihre Zuständigkeit nicht ausgeübt hat oder nicht mehr ausübt.

Explanation (if any) :

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Art. 12 par. 3

Déposée par Madame Cristiana MUSCARDINI

Qualité : Membre

Il paragrafo 3 é così riscritto :

« Qualora gli Stati membri non abbiano esercitato o cessino di esercitare la propria competenza in un settore soggetto a competenza condivisa, l'Unione può esercitare la propria »

Explication éventuelle :

AMENDMENT FORM

Suggestion for amendment of Article : 12 §1

By Mr : Joachim Wuermeling and Peter Altmaier

Status : - Alternates

(1) Die Union verfügt über eine mit den Mitgliedstaaten geteilte Zuständigkeit, wenn ihr die Verfassung eine Zuständigkeit zuweist, die nicht die in den Artikeln 11, **13, 14** und 15 genannten Bereiche betrifft.

Explanation (if any) :

FICHE AMENDEMENT

Proposition d'amendement à l'Article 12 :

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

Article 12 :

A la fin du point 4, rajouter les alinéas suivants :

- les règles de concurrence ;
- la recherche et le développement technologique, l'espace ;
- la coopération au développement ;
- l'aide humanitaire ;
- les accords internationaux dans le domaine du commerce des services culturels et audiovisuels, des services d'éducation, ainsi que des services sociaux et de santé humaine et des accords concernant les aspects non commerciaux de la propriété intellectuelle.

Explication éventuelle :

L'ensemble des domaines inclus par cet amendement fait à l'heure actuelle partie des domaines de compétence partagée.

AMENDMENT FORM

Suggestion for amendment of Article 12: Les compétences partagées

By Ms Meglena Kuneva

Status : Member

1. *(sans changement)*
2. *(sans changement)*
3. *suppression*
4. *suppression*
5. *suppression*
6. *suppression*

Explanation (if any) :

L'article constitue en effet un catalogue de compétences, idée qu'un grand nombre de conventionnels ont rejetée.

AMENDMENT FORM

Suggestion for amendment of Article 12.1, 12.4 and 12.4 bis (new):

By Mrs Lena Hjelm-Wallén and Mr Sven-Olof Petersson, government representatives

Status : - **Member: Hjelm-Wallén**

- **Alternate: Petersson**

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 11, **13, 14**¹ and 15 .

4. Shared competence applies in the following principal areas:

- internal market
- ~~area of freedom, security and justice~~²
- agriculture and fisheries
- transport
- trans-European networks
- [energy]³
- social policy
- economic and social cohesion
- environment
- [public health, **except health services and medical care**]⁴, and
- consumer protection.

4 bis. The Union shall share competence with the Member States in the area of freedom, security and justice regarding measures in the fields of visas, asylum, migration and judicial cooperation in civil matters. Without prejudice to the competences of the Member States, the Union shall, in accordance with the rules set out in Part Two, develop common action in the fields police and judicial cooperation in criminal matters.²

Explanation

¹ Coordination of economic policies (Article 13) and the common foreign and security policy (Article 14) are not areas of shared competence.

² The area of freedom, security and justice should appear in a separate paragraph. Police and judicial cooperation in criminal matters are highly sensitive and need special provisions. Competence in these fields should primarily belong to the Member States. The nature of the cooperation in these fields must therefore be further clarified in Part Two of the Constitution.

³ Reservation: Difficult to draft a specific legal basis on energy since acts relating to this area have been adopted on several legal bases (not only on Article 308).

⁴ Reservation: Public health is mainly an area for supporting action. The Union should not have shared competence in the areas of health services and medical care (compare Article 152.5 EC).

AMENDMENT FORM

Suggestion for amendment of Article : 12

By Ms : Giannakou Marietta

Status : - Member

Article 12: Shared Competencies

4. Shared competence applies in the following principal areas:
- internal market
 - area of freedom, security and justice, *including asylum, immigration policy, judicial cooperation in civil and criminal matters, approximation of criminal rules and policy cooperation, in particular to combat organised crime*
 - agriculture and fisheries, *including animal protection*
 - transport
 - trans-European networks
 - energy
 - social policy
 - economic and social cohesion
 - environment
 - *intellectual property*
 - public health
 - *fight against drugs*
 - consumer protection *and*
 - *the prevention of and fight against fraud affecting the financial interests of the Union.*

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article 12 :

By Mr Joschka Fischer

Status : - Member

Artikel 12: Geteilte Zuständigkeiten

- (1) Die Union verfügt über eine mit den Mitgliedstaaten geteilte Zuständigkeit, wenn ihr die Verfassung eine Zuständigkeit zuweist, die nicht die in den Artikeln 11 und 15 genannten Bereiche betrifft.
- (2) Der Umfang der geteilten Zuständigkeiten der Union ergibt sich aus den Bestimmungen des Teils II.
- (3) Die Mitgliedstaaten können ihre Zuständigkeit in einem Bereich geteilter Zuständigkeit ~~dann~~ ausüben, sofern und soweit ~~wenn~~ die Union ihre Zuständigkeit nicht ausgeübt hat ~~oder nicht mehr ausübt~~.
- (4) Eine zwischen der Union und den Mitgliedstaaten geteilte Zuständigkeit liegt in folgenden Hauptbereichen vor:
- Binnenmarkt
 - [Raum der Freiheit, der Sicherheit und des Rechts] [Visa, Asyl, Einwanderung und andere Politiken betreffend den freien Personenverkehr]*
 - Landwirtschaft und Fischerei
 - Verkehr
 - transeuropäische Netze**
— ~~Energie~~
 - Sozialpolitik**
 - wirtschaftlicher und sozialer Zusammenhalt**
 - Umwelt
 - Gesundheitswesen** ~~und~~
 - Verbraucherschutz und
 - Wettbewerbsregeln im Binnenmarkt.

(5) In den Bereichen Forschung, technologische Entwicklung und Raumfahrt** ist die Union für die Durchführung von Maßnahmen - insbesondere von Programmen - zuständig, ohne dass die Ausübung dieser Zuständigkeit zur Folge haben könnte, dass den Mitgliedstaaten die Ausübung ihrer Zuständigkeiten verwehrt ist.

(6) In den Bereichen Entwicklungszusammenarbeit und humanitäre Hilfe ist die Union für die Durchführung von Maßnahmen und die Gestaltung einer gemeinsamen Politik zuständig, ohne dass die Ausübung dieser Zuständigkeit zur Folge haben könnte, dass den Mitgliedstaaten die Ausübung ihrer Zuständigkeiten verwehrt ist.

Explanation (if any) :

zu (4) Der Bereich Energie ist für unsere Zukunft ein sehr wichtiges Kapitel. Allerdings bedarf es hier eines Konsenses.

**: Die Frage der genauen Bezeichnung des Politikbereichs bedarf gesonderter Prüfung. Dies gilt insbesondere auch für die Einordnung der polizeilichen und justiziellen Zusammenarbeit in Strafsachen.*

*** : Die Einordnung der mit zwei Sternchen gekennzeichneten Politiken bedarf gesonderter Überprüfung im Licht der Formulierung des Teils II.*

AMENDMENT FORM

Suggestion for amendment of Article: 12

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 12: Shared competences

1. The Europe of Democracies shall share competence with the Member States where the Treaty confers on it a competence which does not relate to the areas referred to in Articles 11 [*areas of exclusive competences*] and 15 [*areas for supporting actions*].
2. The scope of shared competences is determined by the provisions of Part Two.
3. [*deleted*]
4. Shared competence applies in the following principal areas:
 - internal market
 - [*deleted - area of freedom, security and justice*]
 - agriculture and fisheries
 - [*deleted - transport*]
 - trans-European networks
 - [*deleted - energy*]
 - [*deleted - social policy*]
 - economic and social cohesion
 - environment, and
 - [*deleted - public health*]
 - consumer protection.
5. In the areas of research, technological development and space, Europe of Democracies shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.
6. In the areas of development cooperation and humanitarian aid, the Europe of Democracies shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.

AMENDMENT FORM

Suggestion for amendment of Article 12:

By Elmar BROK, Jozsef SZAJER, Erwin TEUFEL, René VAN DER LINDEN, Frantisek KROUPA, Jacques SANTER, Teresa ALMEIDA GARRETT, Peter ALTMAIER, 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 12: Shared competences

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 11 and 15 .
2. The scope of shared competences is determined by the provisions of Part Two.
3. Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.
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

Article 12: Shared competences

- ~~1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 11 and 15 .~~
- ~~2. The scope of shared competences is determined by the provisions of Part Two.~~
- ~~3. Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.~~
- ~~4.1. The Union shall share competence with the Member States~~ Shared competence applies in the following principal areas:
 - *harmonisation of laws in the area of the internal market, as far as not covered by Article 11, including environmental, consumer protection, social, and fiscal measures where they contribute to the functioning of the internal market,*

- social policy
 - economic and social cohesion
 - environment
 - public health, and
 - consumer protection.
5. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.
6. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.
- area of freedom, security and justice, *including asylum, immigration policy, judicial cooperation in civil and criminal matters, approximation of criminal rules and policy cooperation, in particular to combat organised crime,*
 - agriculture and fisheries, *including animal protection,*
 - transport (*rail, road, inland waterway, sea and air*),
 - trans-European networks,
 - energy, *including a policy of high nuclear safety and security standards,*
 - social policy, *with the exception of the organisation of social security schemes and the harmonisation of industrial relations,*
 - *the combating of all discrimination within the meaning of Article 21 of the Charter,*
 - economic and social cohesion,
 - environment, *with the exception of the quantitative management of water resources and town and country planning,*
 - *the combating of threats to public health of a significant cross-border nature,*
 - ~~consumer protection,~~ [already included in first indent]
 - *prudential supervision,*
 - *intellectual property,*
 - *the prevention of and fight against fraud affecting the financial interests of the Union.*
- 5.2 In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that

competence may not result in Member States being prevented from exercising their competence.

~~6.3~~ In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.

4. (new) *The details regarding the extent of the shared competences are set out in Part Two of the Constitution.*

Explanation:

Para 1, 2 and 3:

- Also with regard to shared competences, it must be clear from the text of Article 12 alone in which fields the Union may legislate or take action. **It is not acceptable that for the determination of such major issues of power, there is only a reference to Part Two of the Constitution.** It is therefore suggested to delete paras 1, 2 and 3 and to establish instead **a comprehensive list of the shared competences of the Union**, based on the existing acquis.

Para 3 (now 1):

- is meant to establish a comprehensive list of the Union's shared competences;
- ***harmonisation of laws in the area of the internal market, as far as not covered by Article 11, including internal-market related environmental, consumer protection, social, and fiscal measures:*** seeks to clarify the distinction between the exclusive competence under Article 11 (the four fundamental freedoms of the internal market) and the competence under the current Article 95 EC Treaty (harmonisation of laws in the field of the internal market). The definition further clarifies that under this competence, the Union may also adopt environmental, consumer protection, social and fiscal measures as long as there is an internal-market context. This covers in particular the existing competences in Articles 42, 93 and 153(3)(a) of the EC Treaty.
- ***area of freedom, security and justice:*** must be more specific and include a reference to the competences currently exercised under Articles 61(a), (b) and 63, 64, 65 EC and Articles 29(2), last indent, 30, 31 and 32 of the EU Treaty.
- ***including animal protection:*** included to ensure that the provisions of the Protocol on animal protection (which should be annexed to the Constitution) are also observed in the context of Union legislation.
- ***transport (rail, road, inland waterway, sea and air):*** incorporates Article 80 of the EC Treaty.
- ***energy, including a policy of high nuclear safety and security standards;*** incorporates the essence of the Euratom Treaty into the competence list.

- ***the combating of discrimination within the meaning of Article 21 of the Charter:*** incorporates the competences under Article 12(2) and 13 of the EC Treaty.
- ***public health:*** under Article 152(1), Community action in this field shall only “complement” national policies. Public health therefore would fall under the supporting competences of the Union (Article 15 in the Praesidium text). This does of course not exclude that internal-market related measures under Article 12 seek to achieve a high level of human health protection, as required for all Union activities by Article 35 of the Charter of Fundamental Rights. In addition, we see a certain need to have a special share competence which could be used in case of threats to public health of a significant cross-border nature, such as the combating of a very infectious disease or of a particularly dangerous virus.
- ***prudential supervision:*** incorporates the competences under Article 105(5) and (6) of the EC Treaty.
- ***the prevention of and fight against fraud affecting the financial interests of the Union:*** incorporates the shared competence under Article 280 of the EC Treaty.

Para 4(new):

Only with regard to the details, a reference to Part Two appears to be acceptable.

AMENDMENT FORM

Suggestion for amendment of Article : **12: Shared competences**

By the Earl of Stockton MEP

Status : - Member - Alternate

3. Where the Union has not exercised or ceases to exercises its competence in an area of shared competence, the Member State may exercise theirs. (New) The Union and the Member States, together with the European Parliament, will review the areas of shared competence to determine, on the basis of future developments, where such a competence should be best exercised.

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
- (New) DELETE
- economic and social cohesion
- environment
- (New) DELETE
- consumer protection.

5. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that competence (New) shall not result in Member States being prevented from exercising their competence.

6. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence (New) shall not result in Member States being prevented from exercising their competence.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 12

By MM : Kiljunen and Vanhanen

Status : - Members

1. Subject to the provisions of Part Two of this Constitution, the Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles **11** and **15**.

2. – 6. [deleted]

Explanation (if any) :

The precise scope and nature of the Union's competence in each policy area should to be defined by the legal bases in Part Two (see the commentary on the previous article).

Article 12, paragraph 3, would no longer be necessary in the light of Article 10, paragraph 2, as proposed above. Should the provision be retained, it would be more appropriate to place it in Article 10. The latter would then set out, in a comprehensive fashion, all the criteria defining the three categories of competence as well as their nature and legal effects.

Article 12 paragraph 4, on the other hand, is superfluous in the light of Article 12, paragraph 1.

AMENDMENT FORM

Suggestion for amendment of Article: 12 (4)

By Ms/Mr: Vytenis Povilas Andriukaitis, Maria Berger, Caspar Einem, Jan Kohout,
Anne van Lancker, Proinsias de Rossa

Status: ☒ Member ☒ Alternate

Article 12 (4):

(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 **including nuclear energy**
- social policy
- economic and social cohesion
- environment
- public health, and
- consumer protection.

Explanation (if any):

It would be against the general logic of the future Constitutional Treaty, if the EURATOM-Treaty stays apart.

FICHE AMENDEMENT

Proposition d'amendement à l'Article 12 para 4:

Déposée par M. Olivier DUHAMEL
Mme Linda McAVAN
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
Mme Helle THORNING-SCHMIDT

Qualité: - Suppléants

Article 12: Les compétences partagées

4. Les compétences partagées entre l'Union et les Etats membres s'appliquent aux principaux domaines suivants :
- le marché intérieur
 - **la fiscalité liée au marché unique**
 - **les services d'intérêt général**
 - l'espace de liberté, de sécurité et de justice
 - **la promotion de l'égalité entre femmes et hommes**
 - l'agriculture et la pêche
 - les transports
 - les réseaux transeuropéens
 - l'énergie
 - **l'industrie**
 - la politique sociale **et de l'emploi**
 - la cohésion économique, sociale **et territoriale**
 - l'environnement
 - la santé publique, et
 - la protection des consommateurs.
-

Explication éventuelle:

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 12 should read as follows:

Article 12: Shared competences

- 1. Subject to the provisions of Part Two of this Constitution,** the Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles **11, 14** and **15**.
- 2. [deleted, see para. 1]**
- 3. [see our draft Article 10 para. 2]**
- 4. [deleted]**
- 5. [see our draft Article 15]**
- 6. [see our draft Article 15]]**

Commentary:

The precise scope and nature of the Union's competence in each policy area should to be defined by the legal bases in Part Two.

Article 12, paragraph 3, would no longer be necessary in the light of Article 10, paragraph 2, as proposed above. Should the provision be retained, it would be more appropriate to place it in Article 10. The latter would then set out, in a comprehensive fashion, all the criteria defining the three categories of competence as well as their nature and legal effects.

Article 12 paragraph 4, on the other hand, is superfluous in the light of Article 12, paragraph 1.

The areas referred to in paragraphs 5 and 6 should be placed under draft Article 15.

AMENDMENT FORM

Suggestion for amendment of Article 12

By Mr Ivan Korčok (SK)

Status : - Member

Article 12: Shared competences

1. The Union shall share competence with the Member States where the ~~Constitution~~ Constitutional Treaty confers on it a competence which does not relate to the areas referred to in Articles 11 and 15 .
 2. The scope of shared competences is determined by the provisions of Part Two.
 3. Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.
 4. Shared competence applies in the following principal areas:
 - internal market
 - area of freedom, security and justice
 - agriculture and fisheries
 - transport and trans European networks
 - ~~trans-European networks~~
 - energy
 - social policy
 - economic and social cohesion
 - environment
 - public health, and
 - consumer protection.
 5. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.
 6. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.
-

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article 12(5)

By Prof Peter Serracino-Inglott - Member

Mr John Inguanez - Alternate

To be reworded as follows :

In the areas of research, technological development, and ocean and outer space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.

Explanation (if any) :

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 12

Déposée par Madame ou Monsieur : Mme PALACIO

Qualité : - Membre - Suppléant

Article 12: Les compétences partagées

1. L'Union dispose d'une compétence partagée avec les Etats membres lorsque la Constitution lui attribue une compétence qui ne relève pas des domaines visés aux articles 11 et 15.
2. L'étendue des compétences partagées de l'Union est déterminée par les dispositions de la Partie II.
- ~~3. [Lorsque l'Union n'a pas exercé ou cesse d'exercer sa compétence dans un domaine de compétence partagée, les Etats membres peuvent exercer la leur].~~
4. Les compétences partagées entre l'Union et les Etats membres s'appliquent notamment aux principaux domaines suivants :
 - le marché intérieur
 - l'espace de liberté, de sécurité et de justice
 - l'agriculture et la pêche
 - les transports,
 - les réseaux transeuropéens
 - l'énergie
 - la politique sociale
 - la cohésion économique et sociale
 - l'environnement
 - la santé publique, et
 - la protection des consommateurs.
5. Dans les domaines de la recherche, du développement technologique et de l'espace, l'Union a une compétence pour mener des actions, notamment la mise en œuvre de programmes, sans que l'exercice de cette compétence puisse avoir pour effet d'interdire aux Etats membres d'exercer les leurs.
6. Dans les domaines de la coopération au développement et de l'aide humanitaire, l'Union a une compétence pour entreprendre des actions et pour mener une politique commune, sans que l'exercice de cette compétence puisse avoir pour effet d'interdire aux Etats membres d'exercer les leurs.

Explication :

Le paragraphe 3 est une répétition de la dernière phrase du paragraphe 2 de l'article 10.

L'ajout de l'adverbe « notamment » dans le paragraphe 4 vise à montrer le caractère non exhaustive de la liste.

AMENDMENT FORM

Suggestion for amendment of Article : 12

By: Ms Linda McAvan

Status : - Member - Alternate

12.4 Add to list of shared competences: "**the fight against all forms of discrimination**"

***Explanation:** If there is to be a list of shared competences, key policy areas must be included*

12.5 In the areas of research **and** technological development (2 words deleted)...rest of text unchanged

***Explanation:** space should not be singled out for inclusion in the Treaty*

AMENDMENT FORM

Suggestion for amendment of Article : 12

By Mr : Gianfranco FINI

Status : - Member

Articolo 12: Competenze condivise

1. L'Unione dispone di una competenza condivisa con gli Stati membri sulla base delle pertinenti disposizioni della parte seconda della presente Costituzione nelle seguenti materie: ~~a quando la Costituzione le attribuisce una competenza che non rientra nei settori di cui agli articoli 11 e 15.~~
2. ~~La portata delle competenze condivise dell'Unione è determinata dalle disposizioni della parte II.~~
3. ~~Qualora l'Unione non abbia esercitato o cessi di esercitare la sua competenza in un settore soggetto a competenza condivisa, gli Stati membri possono esercitare la loro.~~
4. ~~Le competenze condivise tra l'Unione e gli Stati membri si applicano ai seguenti settori principali:~~
 - mercato interno
 - **giustizia ed affari interni** ~~spazio di libertà, sicurezza e giustizia~~
 - agricoltura e pesca
 - trasporti
 - reti transeuropee
 - energia
 - politica sociale
 - coesione economica e sociale
 - ambiente
 - protezione dei consumatori
 - **ricerca scientifica e spazio**
 - **cooperazione allo sviluppo ed aiuto umanitario**

5. ~~Nei settori della ricerca, dello sviluppo tecnologico e dello spazio, l'Unione è competente per condurre azioni, segnatamente l'attuazione di programmi, senza che l'esercizio di tale competenza possa avere per effetto di vietare agli Stati membri di esercitare la loro.~~
6. ~~Nei settori della cooperazione allo sviluppo e dell'aiuto umanitario, l'Unione è competente per avviare azioni e condurre una politica comune, senza che l'esercizio di tale competenza possa avere per effetto di vietare agli Stati membri di esercitare la loro.~~

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article: 12§4

By Mr: Paraskevas AVGERINOS

Status: Member

Delete 12§4

Explanation:

Είναι πολιτικά άστοχο να υπάρξει οριοθέτηση αρμοδιοτήτων, ιδιαίτερα σ' αυτό το στάδιο που μορφοποιείται η Ευρωπαϊκή Ένωση. Μια τέτοια πράξη θα οδηγούσε σε πάγωμα της εξέλιξης της ενοποιητικής διαδικασίας. Άλλωστε στη Συνθήκη αναφέρεται: «δημιουργούμε μια Ένωση *sans cesse* » που συνεχώς εξελίσσεται...

Η Νίκαια ζήτησε από τη Συνέλευση, όπως αναφέρεται και στο παρόν επεξηγηματικό σημείωμα στον τίτλο ΙΙΙ, όχι καταλόγους αλλά να εξετάσει η Συνέλευση «πώς να καθορισθεί και να παρακολουθείται η ακριβέστερη οριοθέτηση αρμοδιοτήτων μεταξύ της Ευρωπαϊκής Ένωσης και των κρατών μελών, η οποία θα αντικατοπτρίζει την αρχή της επικουρικότητας». Το Laeken επίσης ζήτησε από τη συνέλευση «πώς μπορούμε να καταστήσουμε διαφανέστερο τον καταμερισμό των αρμοδιοτήτων» και «πώς να εξασφαλισθεί η διατήρηση του νέου καταμερισμού αρμοδιοτήτων και να ληφθεί συνάμα μέριμνα ώστε να μην ατονήσει η ευρωπαϊκή δυναμική».

Δε ζητήθηκε από τη Συνέλευση κατάλογος αρμοδιοτήτων.

AMENDMENT FORM

Suggestion for amendment of Article: 12§2

By Mr: Paraskevas AVGERINOS

Status: Member

Η έκταση των συντρεχουσών αρμοδιοτήτων της Ένωσης καθορίζεται βάσει των διατάξεων του Μέρους II.

Η έκταση **και το περιεχόμενο** των συντρεχουσών αρμοδιοτήτων της Ένωσης καθορίζεται βάσει των διατάξεων του Μέρους II. **Η Ένωση εκτελεί επίσης δράσεις συντονισμού, συμπλήρωσης και στήριξης όπως καθορίζονται στο Μέρος II.**

Explanation:

AMENDMENT FORM

Suggestion for amendment of Article : 12

By Mr Kirkhope MEP

Status : Member

1. The **Community** shall share competence with the Member States where the **simplifying Treaty** confers on it a competence which does not relate to the areas referred to in Articles 11 and 15 .
2. The scope of shared competences is determined by the provisions of Part Two.
3. Where the **Community** has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs. **Areas of shared competence shall be reviewed on a regular basis to ensure competences are exercised at the appropriate level according to the principle of subsidiarity.**
4. Shared competence applies in the following principal areas:
 - internal market
 - **DELETE**
 - agriculture (**DELETE fisheries**)
 - **DELETE**
 - trans-European networks
 - **DELETE**
 - **DELETE**
 - **DELETE**
 - environment
 - consumer protection
 - commercial policy.
5. In the areas of research and technological development, the **Community** shall have competence to carry out actions, in particular to implement programmes, **provided such actions have been agreed by unanimity**; however, the exercise of that competence **shall** not result in Member States being prevented from exercising their competence.

6. In the areas of development cooperation and humanitarian aid, the **Community** shall have competence to take action and conduct a common policy; however, the exercise of that competence **shall** not result in Member States being prevented from exercising their competence.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 12

By Mr : Georgios Katiforis

Status : - Member

Article 12: Shared competences

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 11 ~~and 15~~ .
2. The scope of shared competences is determined by the provisions of Part Two.
3. Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.
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.
5. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.

6. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.

AMENDMENT FORM

Suggestion for amendment of Article 12

By: **Danuta Hübner**

Status: **Member**

| <i>Text of the Praesidium</i> | <i>Proposed Amendments</i> |
|--|--|
| <u>Article 12: Shared competences</u> | <u>Article 12: Shared competences</u> |
| <p>1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 11 and 15 .</p> <p>2. The scope of shared competences is determined by the provisions of Part Two.</p> <p>3. Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.</p> <p>4. Shared competence applies in the following principal areas:</p> <ul style="list-style-type: none">– 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. <p>5. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that</p> | <p>1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 11 and 15 .</p> <p>2. The scope of shared competences is determined by the provisions of Part Two.</p> <p>3. Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.</p> <p>4. Shared competence applies in the following principal areas:</p> <ul style="list-style-type: none">–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 <p>5. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that competence may not result in Member</p> |

| | |
|--|--|
| <p>competence may not result in Member States being prevented from exercising their competence.</p> <p>6. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.</p> | <p>States being prevented from exercising their competence.</p> <p>6.—In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.</p> |
| <p>Explanation:</p> <p>1. The details of shared competences will be defined in the part II of the Constitutional Treaty.</p> | |

AMENDMENT FORM

Suggestion for amendment of Article 12(5)

By Michael Frendo - Member

To be reworded as follows :

In the areas of research, technological development, and ocean and outer space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.

Explanation (if any) :

The ocean is also an important area of exploration, as is outer space.

AMENDMENT FORM

Suggestion for amendment of Article : 12

By Ms / Mr :

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

Status : - Member - Alternate

Paragraphs No.s 1, 2 and 3 will be omitted.

Para 4 will be changed:

The Union shall share competence with the Member States ~~Shared competence~~
applies in the following principal areas:

- *internal market, as far as not covered by Article 11,*
- *area of freedom, security and justice, including asylum, immigration policy, judicial cooperation in civil and criminal matters, approximation of criminal rules and policy cooperation,*
- *agriculture and fisheries, including animal protection,*
- *transport (rail, road, inland waterway, sea and air),*
- *trans-European networks,*
- *energy, including a policy of high nuclear safety and security standards,*
- *social policy, including the combating of discrimination within the meaning of Article 21 of the Charter,*
- *economic and social cohesion,*
- *environment,*
- *public health, and*
- *consumer protection,*
- *prudential supervision,*
- *the prevention of and fight against fraud affecting the financial interests of the Union.*

Paragraph No. 5 will become No. 2, No. 6 will become No. 3.

A new para No. 4 will be added:

(new) The details regarding the extent of the shared competences are set out in Part Two of the Constitution.

AMENDMENT FORM

Suggestion for amendment of: Article 12

By: Lamberto Dini

Status : - Member

Aim:

In the list of paragraph four, add the term "Common Foreign and Security Policy".
(Consequently, abolish Article 14)

Explanation :

Article 14 mentions the common foreign and security policy as a competence separate from the three-pronged division established in Articles 11, 12 and 15. The functions involved in CFSP are of a basically executive nature and thus also in this respect distinct from the others, which are mainly of a legislative nature. However, it would be more appropriate to include the CFSP among the shared competences listed in Article 12, even if it would involve the application of specific procedures. With the current formulation, there is the risk of leaving a three-pillared architecture in place exclusively for foreign policy.

AMENDMENT FORM

Suggestion for amendment of Article 12

By : G.M de Vries,
F.C.G.M Timmermans (for article 12 (5)).
R van der Linden (for article 12 (5)).

Th. J.A.M. de Bruijn,
J.J. van Dijk (for article 12.5) .

Status : Members - Alternate Members

Article 12: Shared competences

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 11 and 15 .
2. The scope of shared competences is determined by the provisions of Part Two.
3. Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.
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.

5. In the areas of research, technological development and space, the Union shall have competence [having regard to the quality standards characteristic of science and technology](#) to carry out actions, in particular to implement programmes [and to create structures](#); however, the exercise of that competence may not result in Member States being prevented from exercising their competence.
6. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : Article 12, paragraph 4

By Mr : CUSHNAHAN

Status : - Alternate (European Parliament Delegation)

4. Shared competence applies in the following principal areas:

- internal market
- area of freedom, security and justice
- *the fight against discrimination*
- agriculture and fisheries
- transport
- *tourism*
- trans-European networks
- energy
- social policy
- economic and social cohesion
- environment
- public health, and
- consumer protection.

Explanation (if any) :

If the amendment on the fight against discrimination is not included, non-discrimination issues will be constrained to one policy area such as social policy. This would not allow for non-discrimination issues to be addressed horizontally which is particularly important with regards to disability for example transport, public health, consumer protection and social policy.

Additionally tourism had been omitted despite the fact that it appears in the existing treaties.

AMENDMENT FORM

Suggestion for amendment of Article 12(5)

By Dolores Cristina

Alternate

To be reworded as follows :

In the areas of research, technological development, and ocean and outer space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 12

By Mr Péter Balázs

Status : **Member** - 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.”

Explanation (if any) :

The agriculture is to be considered as a policy under the exclusive competence of the Union.

AMENDMENT FORM

Suggestion for amendment of Article : 12

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

Status : - Member ~~Alternate~~

Artikel 12: Geteilte Zuständigkeiten

~~(1) Die Union verfügt über eine mit den Mitgliedstaaten geteilte Zuständigkeit, wenn ihr die Verfassung eine Zuständigkeit zuweist, die nicht die in den Artikeln 11 und 15 genannten Bereiche betrifft.~~

~~(2) Der Umfang der geteilten Zuständigkeiten der Union ergibt sich aus den Bestimmungen des Teils II.~~

~~(3) Die Mitgliedstaaten können ihre Zuständigkeit in einem Bereich geteilter Zuständigkeit dann ausüben, wenn die Union ihre Zuständigkeit nicht ausgeübt hat oder nicht mehr ausübt.~~

(4) ~~Eine zwischen der Union und den Mitgliedstaaten geteilte Zuständigkeit liegt~~ **Die Union verfügt über eine mit den Mitgliedstaaten geteilte Gesetzgebungszuständigkeit** in folgenden ~~Haupt~~**Bereichen** vor:

- Binnenmarkt,
- Raum der Freiheit, der Sicherheit und des Rechts,
- Landwirtschaft und Fischerei,
- Verkehr,
- transeuropäische Netze,
- Energie,
- Sozialpolitik,
- **Gleichstellung der Geschlechter,**
- wirtschaftlicher und sozialer Zusammenhalt,
- Umwelt,
- Gesundheitswesen und
- Verbraucherschutz.

~~(5) — In den Bereichen Forschung, technologische Entwicklung und Raumfahrt ist die Union für die Durchführung von Maßnahmen — insbesondere von Programmen — zuständig, ohne dass die Ausübung dieser Zuständigkeit zur Folge haben könnte, dass den Mitgliedstaaten die Ausübung ihrer Zuständigkeiten verwehrt ist.~~

~~(6) — In den Bereichen Entwicklungszusammenarbeit und humanitäre Hilfe ist die Union für die Durchführung von Maßnahmen und die Gestaltung einer gemeinsamen Politik zuständig, ohne dass die Ausübung dieser Zuständigkeit zur Folge haben könnte, dass den Mitgliedstaaten die Ausübung ihrer Zuständigkeiten verwehrt ist.~~

Explanation (if any) :

Absatz 1:

Die negative Bestimmung des Anwendungsbereiches ist nicht notwendig, da er in Absatz 4 positiv bestimmt wird.

Absatz 2:

Der Verweis auf den konkreten Umfang der Zuständigkeiten in Teil II der Verfassung sollte nur einmal erfolgen, und zwar in einem Absatz in Artikel 10:

Art. 10. (1) Die Union verfügt über legislative, exekutive und judikative Zuständigkeiten. Der Umfang dieser Zuständigkeiten ergibt sich aus den Bestimmungen des Teil II dieser Verfassung.

Absatz 3:

Diese Bestimmung wiederholt lediglich den Inhalt von Artikel 10 Absatz 2 des Entwurfs.

Absatz 4:

Die Vorschrift benennt Zuständigkeiten der Union. Das sollte auch sprachlich klar zum Ausdruck kommen. Zudem sind in den genannten Bereichen lediglich die Gesetzgebungsbefugnisse geteilter Natur.

Die Gleichstellung der Geschlechter ist als eigenständiger Politikbereich der geteilten Zuständigkeit zuzuweisen.

Absätze 5 und 6:

In beiden Absätzen werden die Zuständigkeiten so definiert wie die ergänzenden Zuständigkeiten. Dementsprechend sind sie in Artikel 15 Absatz 2 zu verankern.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 12

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

Supprimer les paragraphes 2 et 4.

1. L'Union dispose d'une compétence partagée avec les Etats membres lorsque la Constitution lui attribue une compétence qui ne relève pas des domaines visés aux articles 11 et 15.
- ~~2. L'étendue des compétences partagées de l'Union est déterminée par les dispositions de la Partie II.~~
3. Lorsque l'Union n'a pas exercé ou cesse d'exercer sa compétence dans un domaine de compétence partagée, les Etats membres peuvent exercer la leur.
- ~~4. Les compétences partagées entre l'Union et les Etats membres s'appliquent aux principaux domaines suivants :
 - ~~— le marché intérieur~~
 - ~~— l'espace de liberté, de sécurité et de justice~~
 - ~~— l'agriculture et la pêche~~
 - ~~— les transports,~~
 - ~~— les réseaux transeuropéens~~
 - ~~— l'énergie~~
 - ~~— la politique sociale~~
 - ~~— la cohésion économique et sociale~~
 - ~~— l'environnement~~
 - ~~— la santé publique, et~~
 - ~~— la protection des consommateurs.~~~~
5. Dans les domaines de la recherche, du développement technologique et de l'espace, l'Union a une compétence pour mener des actions, notamment la mise en œuvre de programmes, sans que l'exercice de cette compétence puisse avoir pour effet d'interdire aux Etats membres d'exercer les leurs.

6. Dans les domaines de la coopération au développement et de l'aide humanitaire, l'Union a une compétence pour entreprendre des actions et pour mener une politique commune, sans que l'exercice de cette compétence puisse avoir pour effet d'interdire aux Etats membres d'exercer les leurs.

Explication éventuelle :

Paragraphe 2 : le paragraphe 2 ne vaut pas seulement pour les compétences partagées mais pour toutes les catégories de compétences. S'agissant d'une application du principe d'attribution, cette disposition devrait figurer de manière générale à l'article 9 §1^{er}.

Paragraphe 4 : Le paragraphe 4 dresse une liste des compétences qui n'est qu'exemplative. Cette liste ne peut dès lors que prêter à confusion. Une telle liste illustrative, si elle peut se justifier dans un manuel de vulgarisation, n'a pas sa place dans une Constitution. La liste des compétences partagées étant en vertu du paragraphe 1^{er} une catégorie résiduelle, il n'est en outre pas nécessaire d'énumérer ces compétences.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 12

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

Qualité : - Membre *X* - Suppléant

12. Delete « principal»

Explication éventuelle

The original text allows for the addition of further competences without end

12.1 Delete and replace with « The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 11 and 15. »

Explication éventuelle

This paragraph has been redrafted to make clear that those areas not covered by exclusive competences or areas for supporting action are shared competences. If this is done sufficiently clearly, paragraphs 2-4 will be unnecessary.

12.3 Delete. Insert « Member States may exercise their legislative prerogative in this area. In the absence thereof, the Union may engage in exercising joint competence. »

Explication éventuelle

The original wording is the wrong way round.

12.3a Insert new clause « The Union will undertake to apply sunset clauses to its activities.»

Explication éventuelle

In areas where competences have not been successfully shared, better programmes can consequently be run by national governments on the basis of the experience learned, and therefore time-limited legislation is needed to ensure that these programmes are extended on the basis of success and common accord.

12.4 Delete « area of freedom, security and justice »

Explication éventuelle

The Union's pillared structure with its intergovernmental parts should not be collapsed. The intergovernmental method is essential for democracy as it keeps decision-making closer to the citizens

12.4 Delete « agriculture»

Explication éventuelle

The CAP can only be reformed by restoring control to national parliaments. Currently, citizens pay twice – once to pay the tax subsidies, and again at the checkout because of the higher cost of the produce. This hits poor families the most. Only by putting the system back under national control will agricultural spending be disciplined and accountable.

12.4 Delete « and fisheries»

Explication éventuelle :

The CFP has been a complete disaster (see the recent Forum submission by ordinary fishermen to understand why). Only by restoring national control, and to let internal subsidiarity take effect, can we restore common sense to a policy which is causing social disaster and ecological havoc, before our seas go the way of the Canadian Grand Banks

12.4 Delete «transport»

Explication éventuelle

We need to reconsider why the union should have a role in matters which can be very local.

12.4 Delete «energy»

Explication éventuelle

There is no treaty base presently for any Union action here

12.4 Delete «social policy»

Explication éventuelle

Best left to member states who have a greater understanding of their society

12.4 Delete «economic and social cohesion»

Explication éventuelle

Cohesion funds were principally designed to facilitate less developed economies participating in the Euro. As the four primary recipients have since been deemed to have converged sufficiently so to join, this form of aid line should be closed, and the assistance concentrated on helping the poorer countries of this world

12.4 Delete « public health »

Explication éventuelle :

The working group on Complementary Competences resolved that this should be a supporting measure, as a majority of public health policy matters had been allocated to Member States under the present treaties

12.4 Delete « trans-European networks »

Explication éventuelle

The working group on Complementary Competences resolved that this should be a supporting measure

12.4 Delete whole clause

Explication éventuelle

The working group on complementary competences decided not to set out a list. It also did not agree to the inclusion of TENs or Public Health.

12.5 Delete whole clause

Explication éventuelle

There is no evidence that Union policies are more efficient at allocating resources than the current multinational agreements. The need for centralised control and funding is not therefore proven.

12.6 Delete whole clause

Explication éventuelle

The Communities' Development budget has been characterised by fraud and mismanagement, as detailed by the Court of Auditors, which has for many years declined to verify the accuracy and completeness of the accounts.

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. |
|--|--|---|--|

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 12

Déposée par Monsieur : Hannes FARNLEITNER

Qualité : - Membre

Art 12. 3. Where the Union **does not exercise** its competence in an area of shared competence, the Member States may exercise theirs.

Art 12. 4. Shared competence applies **in particular** in the following principal areas:

- *internal market*

RELATION TO ART.11 (1) SHOULD BE CLARIFIED (see there)

- area of freedom, security and justice
- agriculture and fisheries
- transport
- trans-European networks
- energy
- social policy
- economic and social cohesion
- environment
- public health
- consumer protection
- **intellectual property**

Explication:

Art 12. 3: *Simplified and clearer wording.*

Art 12.4: *The non-exhaustive character of the following list should be underlined by inserting “**in particular**”.*

*Concerning the **internal market** see comment to Art.11 (1).*

*WG V (CONV 375/02) recommended: “New specific legal bases in the Treaty should be adopted for subject matters that have been regulated primarily on the basis of Article 308, e.g. balance-of-payments loans to third countries, intellectual property rights, energy policy civil protection and the establishment of agencies, if the Union wishes to pursue policies in these fields.” Therefore I welcome the inclusion of energy in the list of principal areas where shared competences apply. However, **intellectual property should be added too.***

*It is my understanding that the inclusion of **public health** among the areas of shared competence would also facilitate possible Union measures against doping and bioterrorism.*

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.

AMENDMENT FORM

Suggestion for amendment of Article 12 :

By Pervenche Berès, Olivier Duhamel, Maria Berger, Jacques Floch, Anne Van Lancker :

Status : Member

ARTICLE 12 : Compétences partagées

alinéa 4 bis *nouveau* (reprennant en partie les termes de l'article 13 du projet du présidium):

4 bis. *Dans les domaines des politiques économiques, sociales et de l'emploi, l'Union mène une politique et la coordonne avec celle des Etats membres, notamment en établissant les grandes orientations de ces politiques. L'Union et les Etats membres conduisent leurs politiques économiques, sociales et de l'emploi, en prenant en compte l'intérêt commun, en vue de contribuer à la réalisation des objectifs de l'Union. Des dispositions spécifiques déterminées par les dispositions de la partie II (ou III) s'appliquent aux Etats membres qui ont adopté l'euro.*

aliéna 5 :

5. Dans les domaines de la recherche, du développement technologique et de l'espace, l'Union a une compétence pour mener des actions, notamment la mise en œuvre de programmes (**20 mots supprimés**).

aliéna 6 :

6. Dans les domaines de la coopération au développement et de l'aide humanitaire, l'Union a une compétence pour entreprendre des actions et pour mener une politique commune (**20 mots supprimés**).

Explanation (if any) :

Amendment of Article 12 §4

By: M.J.CHABERT
M.M.DAMMEYER
M.P.DEWAEL
Ms. C.du GRANRUT
M.C.MARTINI
M. R.VALCARCEL SISO

Status : - ~~Member~~ - ~~Alternate~~ — - Observer

"SHARED COMPETENCES"

– Addition to Article 12 §4:

- ...

- transfrontier cooperation

- ...

Explanation

AMENDMENT FORM

Suggestion for amendment of Article 12 :

By Pervenche Berès, Olivier Duhamel, Jacques Floch, Anne Van Lancker, Helle Thorning-Schmitt :

Status : Member

Article 12: Les compétences partagées

4. Les compétences partagées entre l'Union et les Etats membres s'appliquent aux principaux domaines suivants :
- le marché intérieur
 - *la fiscalité liée à l'économie sociale de marché*
 - *les services d'intérêt général*
 - l'espace de liberté, de sécurité et de justice
 - *promotion de l'égalité entre femmes et hommes*
 - l'agriculture et la pêche
 - les transports
 - les réseaux transeuropéens
 - l'énergie
 - *l'industrie*
 - la politique sociale *et de l'emploi*
 - la cohésion économique, sociale *et territoriale*
 - l'environnement
 - la santé publique, et
 - la protection des consommateurs.
-

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 12

By Mr Hain

Status : Member

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles x and x [*currently 11 and 15*].
2. *Delete.*
3. *Delete.*
4. *Delete.*

Paragraphs 5 and 6: The language of these paragraphs is OK, but see below.

Explanation (if any) :

Shared competences should be a residual category. They should therefore not be listed explicitly. To have an 'indicative list' of some shared competences is the worst of both worlds.

So this Article should come after what are currently Articles 11, 13, 14 and 15.

Paragraph 1 has been redrafted to make clear that those areas not covered by exclusive competences or areas for supporting action are shared competences. If this is done sufficiently clearly, paragraphs 2-4 will be unnecessary.

The areas covered by Articles 12.5 and 12.6, do not sit easily in either the category of shared competence or that of supporting measures. These paragraphs should come under a separate Article which should also include economic policy. The new article could be entitled "Policies combining shared competence and supporting actions."

AMENDMENT FORM 2

Amendment of Article 3 § 2

Amendment of Article 12 § 4

By: M.J.CHABERT

M.M.DAMMEYER

M.P.DEWAEL

Ms. C. du GRANRUT

M.C.MARTINI

M. R. VALCARCEL SISO

Status : - Member - Alternate - Observer

"RECOGNITION OF THE PRINCIPLE OF TERRITORIAL COHESION"

– **Addition to Article 3 §2 :**

*" The Union shall work for a Europe of sustainable development based on balanced economic growth and social justice, with a free single market, and economic and monetary union, aiming at full employment and generating high levels of competitiveness and living standards. It shall promote economic, social **and territorial** cohesion, **interregional and transfrontier cooperation**, equality between women and men, and environmental and social protection, and shall develop scientific and technological advance including the discovery of space. It shall encourage solidarity between generations and between States **and their regions and local authorities**, and equal opportunities for all."*

– **Addition to Article 12 §4, eighth indent :**

*" economic, social **and territorial** cohesion".*

Explanation:

The debate during the Convention meeting of 7 February 2003 showed broad support for the recognition of the territorial cohesion principle, which should in particular allow the expression of solidarity towards regions with special structural difficulties, such as islands, mountains or northern regions, ultra-peripheral regions and metropolitan areas.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 12 (4ème alinéa)

Déposée par Monsieur : Alain Lamassoure

Qualité : Membre

Article 12 (4ème alinéa)

4. Les compétences partagées entre l'Union et les Etats membres s'appliquent aux principaux domaines suivants :

- ~~le marché intérieur~~
 - l'espace de liberté, de sécurité et de justice
 - l'agriculture, **la forêt** et la pêche
 - les transports,
 - les réseaux transeuropéens
 - l'énergie
 - **les services d'intérêt général,**
 - la politique sociale
 - la cohésion économique et sociale
 - l'environnement
 - la santé publique,
 - la protection des consommateurs,
 - **la lutte contre les drogues.**
-

Explication : *Sur la suppression de la ligne "marché intérieur", voir mon amendement qui l'inclut à l'article 11§1*

AMENDMENT FORM

Suggestion for amendment of Article : 12 (4)

By Ms / Mr : **Emilio GABAGLIO**

Status: - ~~Member~~ - ~~Alternate~~ **Observer**

Add: Gender Equality

Explanation (if any)

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 12

Déposée par Monsieur : Danny Pieters

Qualité : - - Suppléant : Kamer van Volksvertegenwoordigers - België

. Taalkundige correctie : in artikel 12, sub 4): 'sociale politiek' vervangen door 'sociaal beleid'.

Ook al wordt de term sociale politiek gebruikt in de huidige verdragen, 'politiek' is eerder het equivalent van het Engelse 'politics' dan van 'policy'. Het is dit laatste wat bedoeld wordt; het wordt best uitgedrukt door het woord 'beleid'

: in artikel 12, sub 5): de woorden 'met name' vervangen door 'zoals'.

Het lijkt ons inderdaad belangrijk in alle duidelijkheid de acties die kunnen ondernomen worden niet te beperken tot de klassieke programma's, maar ruimere mogelijkheden te bewaren (zo bv. om vrijwillige kwaliteitscontrolemechanismen te ontwikkelen op communautair niveau). De woorden 'met name' en de equivalenten in andere talen, suggereren echter een beperking tot programma's. Voor ons moeten alle acties kunnen; daarbij verstaan dat wetgevend optreden geen actie is.

Explication éventuelle :

Tot slot nog een algemene maar belangrijke bedenking. In diverse artikelen wordt verwezen naar Deel II van de Constitutie (zie artikelen 12, 15) om de juiste omvang van de bevoegdheden te kennen. Betekent zulks dat deze artikelen van Deel I geen bevoegdheid kunnen creëren uit zichzelf?

AMENDMENT FORM

Suggestion for amendment of Article 12: Shared competences

By Mr Dick Roche, Representative of the Government of Ireland

Status : Member

Article 12: Shared competences

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 11 and 15 .
 - ~~2. The scope of shared competences is determined by the provisions of Part Two.~~
 3. Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.
 4. Shared competence applies in **aspects of** the following ~~principal~~ areas **the scope of which is determined by the provisions of Part Two:**
 - 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.
 - ~~5. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.~~
 6. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.
-

Explanation (if any) :

To bring greater clarity to the Article, the terms of paragraph 2 should be included in paragraph 4.

As recognised by the Working Group on Complementary Competences, trans-European Networks, public health and research are areas for supporting measures by the Union. They should, therefore, be included in Article 15.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 12

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

Article 12: Les compétences partagées

1. L'Union dispose d'une compétence partagée avec les États membres lorsque la Constitution lui attribue une compétence qui ne relève pas des domaines visés aux articles 11 et 15.
2. L'étendue des compétences partagées de l'Union est déterminée par les dispositions de la Partie II.
3. Lorsque l'Union n'a pas exercé ou cessé d'exercer sa compétence dans un domaine de compétence partagée, les États membres peuvent exercer la leur.
4. Les compétences partagées entre l'Union et les États membres s'appliquent aux principaux domaines suivants :
 - le marché intérieur
 - la fiscalité liée au marché unique
 - l'espace de liberté, de sécurité et de justice
 - l'agriculture et la pêche
 - les transports,
 - les réseaux transeuropéens
 - l'énergie
 - la politique sociale
 - la cohésion économique, sociale et territoriale
 - l'industrie
 - l'environnement
 - la santé publique
 - la protection des consommateurs,
 - les services d'intérêt général
 - la promotion de l'égalité entre les femmes et les hommes.
5. Dans les domaines de la recherche, du développement technologique et de l'espace, l'Union a une compétence pour mener des actions, notamment la mise en œuvre de programmes, sans que l'exercice de cette compétence puisse avoir pour effet d'interdire aux États membres d'exercer les leurs.
6. Dans les domaines de la coopération au développement et de l'aide humanitaire, l'Union a une compétence pour entreprendre des actions et pour mener une politique commune, sans que l'exercice de cette compétence puisse avoir pour effet d'interdire aux États membres d'exercer les leurs.

7. Dans les domaines de la politique sociale, l'Union dispose d'une compétence pour définir des garanties minimales, notamment en matière de rémunération et d'avantages sociaux, de qualité des services d'intérêt général, sans que l'exercice de cette compétence puisse avoir pour effet d'interdire aux États membres d'arrêter des normes sociales internes plus favorables.

Explication éventuelle :

Il convient d'ajouter à la liste des compétences partagées :

au 4.

- **la fiscalité liée au marché unique,**
- **la cohésion territoriale,**
- **l'industrie,**
- **les services d'intérêt général,**
- **la promotion de l'égalité entre les femmes et les hommes,**

au 7.

- la fixation de **garanties minimales en matière sociale.**

AMENDMENT FORM

Suggestion for amendment of Article : Artículo 12

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

Status : - Member - Alternate

Añadir al guión “política social” las palabras “y *de empleo*” e incluir estos nuevos guiones: “- *promoción de la igualdad entre el hombre y la mujer y no discriminación, - fiscalidad ligada al mercado único, - servicios públicos y de interés general, - industria,- protección ante catástrofes*”.

Explanation (if any) :

FICHE AMENDEMENT

Proposition d'amendement à l'Article 12

Déposée par Monsieur William ABITBOL

Qualité : Suppléant

Article 12 :

1. Les compétences partagées entre l'Union et les Etats membres sont :
 - le marché intérieur,
 - l'agriculture,
 - la pêche et la protection des ressources halieutiques,
 - les transports et les réseaux transeuropéens,
 - la recherche, le développement technologique et l'espace,
 - l'énergie,
 - l'environnement,
 - la santé publique et la protection des consommateurs,
 - la cohésion sociale, économique et territoriale,
 - et la coopération et l'aide humanitaire.

2. Par dérogation à l'article 10.2, l'Union peut agir dans le domaine de la coopération et de l'aide humanitaire de sa propre initiative. L'exercice de cette compétence par l'Union ne suspend pas celle des Etats membres.

Explication éventuelle :

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

AMENDMENT FORM

Suggestion for amendment of Article : I-13: Areas of shared competence

By Ms / Mr : Lone Dybkjaer and Anne Van Lancker

Status : - Member **X** Alternate

Article I-13: Areas of shared competence

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles I-12 and I-16.
 2. Shared competence applies in the following principal areas:
 - internal market,
 - area of freedom, security and justice,
 - agriculture and fisheries, excluding the conservation of marine biological resources,
 - transport and trans-European networks,
 - energy,
 - social policy, for aspects defined in Part Three,
 - ***gender equality***,
 - economic and social cohesion,
 - environment,
 - consumer protection,
 - common safety concerns in public health matters.
-

Explanation (if any) :

Equality between women and men and the fight against all forms of gender discrimination must be a shared competence of the European Union and the Member States and thus be listed in Article 12, Part I. The inclusion of gender equality in the list of areas of shared competence will ensure the creation of a specific legal basis for gender equality in Part Three of the Constitutional Treaty.

AMENDMENT FORM

Suggestion for amendment of Article 13, par. 1

By Mr Poul Schlüter

Status : Alternate

Article 13: The coordination of economic policies

The Member States ~~Union~~ shall coordinate their ir economic policies ~~of the~~ Member ~~States~~, in particular by establishing broad guidelines for these policies.

Explanation:

The proposed wording of Article 13, par. 1 does not adequately reflect the roles of the Union and the Member States with regard to coordination of economic policies. The amendment is more in line with the current Article 99, par. 1 TEU.