

AMENDMENT FORM

Suggestion for amendment of Article 16, par. 3

By Mr Poul Schlüter

Status : Alternate

Article 16: Flexibility clause

3. Provisions adopted on the basis of this Article may not result in widening the scope of Union powers beyond the general framework of this Constitutional Treaty or, in substance, in an amendment thereto, nor entail harmonisation of Member States' laws or regulations in cases where the Constitution excludes such harmonisation
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Explanation:

There seems to be general agreement to the point covered by the proposed wording. It is also in line with the recommendations of WG V on complementary competence. It should therefore be included for sake of clarity.

The point follows from Opinion 2/94 in which the ECJ stated with regard to the former Article 235 TEC:

“That provision, being an integral part of an institutional system based on the principle of conferred powers, cannot serve as a basis for widening the scope of Community powers beyond the general framework created by the provisions of the Treaty as a whole and, in particular, by those that define the tasks and the activities of the Community. On any view, Article 235 cannot be used as a basis for the adoption of provisions whose effect would, in substance, be to amend the Treaty without following the procedure which it provides for that purpose.”