

## AMENDMENT FORM

### Suggestion for amendment of Article 16

By **Mr Andrew Duff, Lord MacLennan, Mr István Szent-Iványi and Mr Lamberto Dini.**

Status : **Member and alternate members.**

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#### Article 16: *Enabling* clause

- 16.1 If action by the Union should prove necessary within the framework of the policies defined in Part Two to attain one of the objectives set by this Constitution, and the Constitution has not provided the necessary powers, the Council, ***acting on*** a proposal from the Commission and after obtaining the assent of the European Parliament, shall take the appropriate measures.
- 16.2 Using the procedure for monitoring the subsidiarity principle referred to in Article 9, the Commission shall draw Member States' national parliaments' attention to proposals based on this Article.
- 16.3 Provisions adopted on the basis of this Article may not entail harmonisation of Member States' laws or regulations in cases where the Constitution excludes such harmonisation.
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#### **Explanation:**

*16 The term 'flexibility' might give the impression that this provision of the Constitution confers a greater permission in terms of general competence than it actually does. It might also be confused with the provisions on closer cooperation which facilitate differentiated integration. This is, more precisely, a clause enabling the institutions to act more effectively within the constitutionally defined parameters of competence rather than for the Union to arrogate to itself a greater attribution of competence.*

*16.1 Decision making in the Council needs to be assessed here in the context of the broader settlement of the legislative procedures. It is not self-evident why, in the enlarged Union, unanimity should be maintained. Other options include, for example, an enhanced form of QMV. The Convention needs to return to this issue.*