

## AMENDMENT FORM

### Suggestion for amendment of Article 16:

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on behalf of the EPP Convention Group

Status: Members and Alternates

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*Text of the Praesidium*

*Proposed Amendments*

#### Article 16: Flexibility clause

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 unanimously on a proposal from the Commission and after obtaining the assent of the European Parliament, shall take the appropriate measures.
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.
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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- 2.new Based on such a decision, the European Parliament and the Council, following the co-decision procedure,—shall jointly take the appropriate measures.*
- ~~2.~~3. 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.
- ~~3.~~4. 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.

5. *The Court of Auditors shall be consulted on all proposals under this Article to ensure that the proposed Union action takes place with total budgetary transparency and that there is no duplication of administrative efforts at Union and national level.*
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### **Explanation:**

#### **Para 1:**

- **References to Part Two should be avoided in such an important provision.** *As long as the content of and the amendment procedure for Part Two are not decided, such references could easily lead to an uncontrolled expansion of Union competences. We therefore suggest to determine the scope of the flexibility clause only with regard to the objectives and competences determined in Part One of the Constitution.*
- *Use of the flexibility clause should follow a **two-stage-procedure**:*  
***First***, to be activated, the clause requires a ***unanimous Council decision and the assent of the European Parliament.***  
***Second***, the legislative measures adopted subsequently should be adopted under the co-decision procedure between Parliament and Council in order to allow the Parliament in all stages of the drafting process to be on equal footing with the Council and to co-determine the content of all legislation adopted under this clause.

#### **Para 5:**

*This special audit has been proposed at the EPP Congress in Estoril in order to keep also the financial consequences of a use of the flexibility clause under control. See also Article 74(4) in the EPP Discussion Paper (Frascati version, as amended, 27 January 2003).*