

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 16

Déposée par Monsieur : Hannes FARNLEITNER

Qualité : - Membre

Art 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 unanimously on a proposal from the Commission after consulting the Committee of the Regions and the Economic and Social Committee and after obtaining the assent of the European Parliament, shall take the appropriate measures.

Art 16.2. *Redundant, preference for deletion*

Explication:

Art 16.1. : *It seems obvious that a flexibility clause is needed for exactly those cases where neither Part One of the Constitution nor the framework of the policies defined in Part Two provide the necessary powers. The areas where the Union has exclusive competence as well as the areas for supporting measures are exhaustively listed in Art.11 and Art.15 of Part One. Art. 12 on shared competences contains only an exemplary list. However, par.1 of Art.12 says that any competence conferred on Union which is not related to the areas referred to in Art.11 and 15 is automatically a shared competence. This would also apply to the entire framework of policies defined (only) in Part Two. Consequently, a flexibility clause exclusively aiming at those cases seems poor or even redundant. What we need is a flexibility clause which allows the Union to act in cases not foreseen within the framework of the policies defined in Part Two. Therefore the flexibility clause should only refer to the objectives set out in the Constitution. Par. 3 of Art.16 – prohibiting harmonisation where the Constitution excludes harmonisation - provides for sufficient limits concerning possible areas of application*

I agree with the proposed unanimity requirement for the Council's decision. Though I equally support the proposed involvement of the European Parliament in the decision-making procedure, I am open with regard to assent or co-decision.

As Union action based on the flexibility clause can have considerable repercussions at the regional/local level and on social partners the adoption procedure should provide for consultation of the Committee of the Regions and the Economic and Social Committee too.

Art 16.2. *Concerning the involvement of national parliaments in subsidiarity control Art.9 (2) refers to the protocol on subsidiarity and proportionality. This will also apply to action taken on the basis of Art.16. I welcome the idea that legal instruments on the basis of the flexibility clause should be especially earmarked. However, such an requirement should be laid down in the Protocol, not in Part One of the Constitution.*