

Article 16: Flexibility clause

1. If, **within the framework of the common market, the Economic and Monetary Union, or the implementation of common policies [or activities referred to in Article 3bis of this Constitution]**, action by the Union should prove necessary [...] 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 **result in widening the scope of Union powers beyond the general framework of this Constitution or, in substance, in an amendment thereto, nor** entail harmonisation of Member States' laws or regulations in cases where the Constitution excludes such harmonisation.

Commentary:

The proposed draft Article should be amended to better reflect the restrictions for the use of the current Article 308 TEC as laid down by the case-law of the ECJ and as highlighted by the Final Report of the working group on complementary competence.