

AMENDMENT FORM

Suggestion for amendment of Article: 24

By :

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Article 24: The legal acts of the Union

1. In exercising the competences conferred on it in the Constitution, the Union shall use as **binding** legal instruments, ~~in accordance with the provisions of Part Two,:~~

- European **Union** laws;
- European **Union** framework laws;
- European **Union** regulations;
- European **Union** decisions.

A **Union** ~~European~~ law shall be a legislative act having general application. It shall be binding in its entirety and directly applicable in all member states.

A **Union** ~~European~~ framework law shall be a legislative act which shall be binding, as to the result to be achieved, on the member states to which it is addressed, but shall leave the national authorities ~~entirely~~ free to choose the form and means of achieving that result.

A **Union** ~~European~~ regulation shall be an ~~non-legislative~~ **implementing** act having general application, **adopted on the basis for the implementation** of legislative acts ~~and or~~ of certain specific provisions of the Constitution. It shall be binding in its entirety and directly applicable in all member states.

A **Union** ~~European~~ decision shall be an ~~non-legislative~~ **implementing** act, binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them. **Specific provisions shall apply in the cases referred to in Article 29 [CFSP].**

2. Recommendations and opinions adopted by the institutions shall have no binding force.
32. When considering proposals for legislative acts, the European Parliament and the Council shall refrain from adopting acts not provided for by the Constitution.

Explanation:

1. **Names of legal acts.**

The Working group on simplification proposed that the EU legal acts should be called “European Union laws”, “European Union framework laws” etc., because these names are

more precise and because European Union does not include all European states. The proposal of WG IX should be respected.

Using the full names of Union acts throughout Articles 24 to 33 (and the Constitution) involves too much repetition and is not necessary for introducing the new names of Union acts in the everyday vocabulary in the Union. Therefore, it is proposed that the full names would only be used in Article 24, first sentence. In addition, if so decided, Article 33 could include a provision, which indicates the formal names of the Union acts, as they appear on those acts when they are published.

2. The classification of Union acts.

We agree with the reform of control mechanisms proposed by WG IX and the praesidium (introduction of call back and simplification of comitology procedures). However, the presentation of this new system is currently geared towards lawyers and technocrats, not ordinary citizens of the Union. The citizens mainly want to know what is the legal effect of different acts, who has adopted them and on what basis. The distinction between Union legislative acts and implementing acts is sufficient from this perspective. The difference in control mechanisms does not justify creating an additional “in-between” category of acts, which blurs the basic distinction between legislative and implementing acts and is unknown for many citizens of the Union.¹

We are aware that the Convention has to make a choice of principle between two competing proposals for a future system of Union acts, neither of which is perfect. In making this choice, we are convinced that the overriding concern of the Convention should be the quest for simplicity and easy understanding by the citizens. The debates between constitutional lawyers concerning the nuances should recede in the face of that overall concern.

(For further details concerning an alternative proposal, see our amendments to Articles 25-28.)

¹ In this context, firstly, we are not convinced by the argument that the principle of national implementation makes it inevitable that the term “implementing acts” should be avoided at the Union level as much as possible and the category of delegated acts created instead. The priority of member states’ intervention (the principle of executive federalism) is mainly a question of division of competencies between the EU and the member states (see further under Article 28). In Articles 24-33 the Constitution should take the necessity of EU intervention as given and deal only with the EU level acts and the relations between them. In this context the use of the term implementation – as currently – would mainly refer to the relationship between the Union legislative acts and the Union acts adopted on their basis.

Secondly, we are also not convinced that the exact nature of control mechanisms, and most notably the introduction of a call back mechanism, should dictate a change in the general classification of Union acts. While it is true that the notion of “delegated legislation” would reassure those who would like a justification for the control by the legislator, it is equally true that the same term would alert those who do not like the idea that the executive (the Commission) could adopt acts, which should normally be adopted by the legislature. On balance, the quest for simplicity should prevail.

Finally, while it has been necessary to justify the intervention of national civil servants in the Commission decision-making under the present comitology system, this concern is likely to be less relevant in the future, given that the introduction of call back mechanism will in any case significantly reduce the role of national civil servants in the framework of simplified comitology procedures.