

AMENDMENT FORM

Suggestion for a new Article 4b:

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on behalf of the EPP Convention Group

Status: Members and Alternates

Text of the Praesidium

Proposed Amendments

Article 4b (New):
Union loyalty

- 1. Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Constitution or resulting from action taken by the Union. They shall facilitate the achievement of the Union's tasks.*
- 2. Member States shall abstain from any measure which could jeopardise the attainment of the objectives and rights laid down in this Constitution.*
- 3. The Union shall act with loyalty towards the Member States.*

Explanation:

- *The principle of Union loyalty is a corner stone of the constitutional order of the Union. In the current text proposed by the Praesidium, aspects of this principle only figures in Title III under “Union competences”, in Articles 8(5), 9(4) and (5). However, the principle of Union loyalty does not govern only the exercise of the Union’s competences, but is **a general principle** which is related to the objectives of the Treaty itself. The principle is therefore currently set out in Article 10 in Part One of the EC Treaty, called “Principles”. It should be recalled that the principle of loyalty may also lead to duties of Member States following directly from primary law: practical illustrations are the duty of Member States to in-*

tervene against private individuals which obstruct the free movement of goods, derived from Article 28 EC in conjunction with Articles 10 EC¹; and the duty of Member States not to adopt measures which encourage the formation of trusts, derived from Article 81 EC in conjunction with Article 10 EC². The principle of Union loyalty must therefore be integrated NOT into the Title on Union competences, but into the general title on “Definition and objectives of the Union”. As an illustration, see Article 63 in the EPP Discussion Paper (Frascati text, as amended, 27 January 2003).

- As such a general principle, it should also make clear that it is not a one-way principle, but includes, according to the *acquis*, **mutual obligations** both for the Union and for the Member States³.

¹ C-265/95, *Commission v. French Republic* [1997] ECR I-6959, para 32: “Article 30 [now Article 28 EC] therefore requires the Member States not merely themselves to abstain from adopting measures or engaging in conduct liable to constitute an obstacle to trade but also, when read with Article 5 of the Treaty [now Article 10 EC], to take all necessary and appropriate measures to ensure that that fundamental freedom is respected on their territory.” (Emphasis added).

² Case C-185/91, *Bundesanstalt für den Güterfernverkehr v. Gebrüder Reiff* [1993] ECR I-5801: “Although Article 85 of the Treaty [now Article 81 EC], in itself, relates only to the conduct of undertakings and does not cover legislative measures or regulations adopted by Member States, the fact nevertheless remains that that article, read in conjunction with Article 5 of the Treaty [now Article 10 EC], requires the Member States not to introduce or maintain in force measures, even of a legislative or regulatory nature, which may render ineffective the competition rules applicable to undertakings. Such would be the case where a Member State required or favoured the adoption of agreements, decisions or concerted practices contrary to Article 85 or reinforced their effects or deprived its own legislation of its official character by delegating to private traders responsibility for taking economic decisions affecting the economic sphere.” (Emphasis added).

³ See the proposed wording in Article 62 in the EPP Discussion Paper (Frascati version of 10 November 2002).