

FICHE AMENDEMENT

Proposition d'amendement à l'Article 4

Déposée par Monsieur William ABITBOL

Qualité : Suppléant

Article 4 :

L'Union dispose de la personnalité juridique.

Explication éventuelle :

Ce texte remplace l'ensemble du texte original de l'article visé

AMENDMENT FORM

Suggestion for amendment of Article : 4-A

By Ms / Mr : Representatives of the Assembly of the Republic - Portugal

Members Alberto Costa, Maria Eduarda Azevedo

Alternates Guilherme d'Oliveira Martins, António Nazaré Pereira

Status :

Article 4 - A

Mutual Assistance

In case any of the Member States faces serious difficulties arising from exceptional occurrences of natural or human origin, the other States and the Union shall provide it with the necessary assistance and support.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 4

Déposée par Madame ou Monsieur : Représentants de l'Assemblée de la République - Portugal

- **Membre:** Alberto Costa, Maria Eduarda Azevedo

- **Suppléant:** Guilherme d'Oliveira Martins, António Nazaré Pereira

Article 4 - A

Aide mutuelle

Au cas où l'un des États membres connaîtrait des graves difficultés en raison d'événements exceptionnels d'origine naturelle ou humaine, les autres États et l'Union lui porteront l'aide et l'assistance nécessaires.

FICHE AMENDEMENT

Proposition d'amendement à l'Article 4

Déposée par Monsieur Dominique de Villepin

Qualité : Membre

Article 4: Personnalité juridique

L'Union dispose de la personnalité juridique.

Explication éventuelle :

AMENDMENT FORM

Suggestion for amendment of Article : 4

By Mr : Edmund Wittbrodt

Status : - Member

Article 4a (new) Supremacy of Union law:

Union law shall prevail over national law.

Article 4b (new) Union loyalty:

- 1. Member States shall take all appropriate measures, whether general or particular, to ensure fulfillment 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 jeopardize the attainment of the objectives and rights laid down in this Constitution**
- 3. The Union shall act with loyalty towards the Member States.**

Article 4c (new) Union solidarity clause:

If any of the Member States should be the object of armed or terrorist attack, the other Member States will afford the Member State so attacked, at the request of its civilian authorities, all military and other aid and assistance within their power. All the instruments available to the Union (including military resources, measures under the common police and judicial policy, as well as civil protection measures) shall be mobilised in order avert, in accordance with the values of the Union, the terrorist threat in the territory of the Union, to protect the civilian population and the functioning of democratic institutions in the Union and to otherwise assist the Member State so attacked within its territory.

Article 4d (new) Symbols of the Union identity:

- 1. The seat of the Union should be Brussels.**
- 2. The flag of the Union should be a circle of twelve golden stars on a blue ground.**
- 3. The currency of the Union shall be the Euro.**
- 4. The anthem of the Union should be the instrumental version of the Ode of Joy from the Ninth Symphony by Ludwig van Bethoven.**

5. 9th May shall be celebrated as Union day.

Explanation (if any) :

The amendments follow the EPP proposals.

Article 4c follows the EPP suggestion, but is unified in one paragraph.

AMENDMENT FORM

Suggestion for amendment of Article: new Article 4 bis

By Mr : Dimitrij Rupel

Status : Member

Article 4 bis: Relations between the Union and the Member States

1. Union law shall have supremacy over national law.
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Explanation:

1. The supremacy of Union law is the main constitutional principle of the acquis. It does not apply only when the Union exercises its competences (Article 9.1. in the Presidium draft), therefore it should be listed in the Title I of the Constitutional Treaty.

AMENDMENT FORM

Suggestion for amendment of Article: 4

By Ms / Mr : Mr. Ms. Irena Belohorska – member, Jan Zahradil – member, Mr. Jens-Peter Bonde - member, Mr. David Heathcoat-Amory - member, Mr. William Abitbol - alternate, Mr. Peter Skaarup - member, Mr. Per Dalgaard - alternate, Mr. Esko Seppänen – alternate, and Mr. John Gormley - alternate.

Article 4: Legal personality

The Europe of Democracies may negotiate international agreements, if provided with a mandate by the member states.

AMENDMENT FORM

Suggestion for a new Article 4d:

By Elmar BROK, Jozsef SZAJER, Erwin TEUFEL, Jan Jacob VAN DIJK, René VAN DER LINDEN, Frantisek KROUPA, John CUSHNAHAN, Antonio TAJANI, Teresa ALMEIDA GARRETT, Peter ALTMAIER, Jan FIGEL, Marietta GIANNAKOU, Piia Noora KAUPPI, Göran LENNMARKER, Hanja MAIJ-WEGGEN, Reinhard RACK, Joachim WÜRMELING

on behalf of the EPP Convention Group

Status: Members and Alternates

Text of the Praesidium

Proposed Amendments

Article 4d (New) :

Symbols of Union identity

1. The seat of the Union shall be Brussels.
2. The flag of the Union shall be a circle of twelve golden stars on a blue ground.
3. The currency of the Union shall be the euro.
4. The anthem of the Union shall be the Ode of Joy from the Ninth Symphony by Ludwig van Beethoven.
5. 9 May shall be celebrated as Union day.

Explanation:

- *This provision should be included in the General Title of the Constitution in order to fill the constitutional text with a vision and to make the Union more visible to its citizens. See also Article 66 of the EPP Discussion Paper (Frascati text, as amended, 27 January 2003).*
- *Para 1 shall stress the decision made in Nice to hold all European Council summits in Brussels. **It shall not prejudice the question of the seat of the individual institutions of the Union (Parliament, Council, Commission), of the ECB, the EIB and Europol which will be continued to be governed by the "Protocol on the location of the seats of the institutions and of certain bodies and departments of the European Communities and Europol". This Protocol should be annexed to the Constitution.***

AMENDMENT FORM

Suggestion for addition of Article : 4 *bis*

By MM : Kiljunen and Vanhanen

Status : - Members

In the field of application of this Constitution, Union law shall have primacy over the conflicting law of the Member States.

Explanation (if any) :

Title I, rather than Title III on Union competences and actions, should deal with those fundamental principles which do not relate solely to the exercise of the Union's competence, but which concern the application of Union law in general..

The provision on the principle of primacy should make it crystal-clear that Union law does not replace the laws of the Member States in the abstract but only prevails over them in specific situations when there is a conflict, in the sense of the established case-law.

AMENDMENT FORM

Suggestion for amendment of Article : **4: Legal personality**

By the Earl of Stockton MEP

Status : - Member - Alternate

The Union shall have legal personality (New): which in no way supplants the existing legal and treaty obligations of the Member States.

Explanation (if any) : *Prevents a single legal personality from interfering with national profiles within international organisations such as the OECD, G8 and the Bretton Woods institutions; it also maintains State neutrality within the framework of the CFSP.*

Amendments submitted by Teija Tiilikainen and Antti Peltomäki 17 February 2003

Article 4: Legal personality (includes new draft Articles 4bis and 4ter)

The Union shall have legal personality.

A new Article 4bis should be added as follows:

Article 4bis: Primacy of Union law

In the field of application of this Constitution, Union law shall have primacy over the conflicting law of the Member States.

Commentary:

Title I, rather than Title III on Union competences and actions, should deal with those fundamental principles which do not relate solely to the exercise of the Union's competence, but which concern the application of Union law in general. Such principles include in particular the principle of primacy of Union law and the obligation of loyal cooperation.

The provision on the principle of primacy should make it crystal-clear that Union law does not replace the laws of the Member States in the abstract but only prevails over them in specific situations when there is a conflict, in the sense of the established case-law.

A new Article 4ter should be added as follows:

Article 4ter: Loyal cooperation

- 1. In accordance with the principle of loyal cooperation, the Union and the Member States shall, in full mutual respect, assist each other to carry out tasks which flow from the Constitution.**
- 2. Member States shall take all appropriate measures, general or particular, to ensure fulfilment of the obligations flowing from the Constitution or resulting from actions taken by the Union Institutions.**
- 3. In accordance with the principle of loyal cooperation, Member States shall facilitate the**

achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the objectives set out in the Constitution. The Union shall act loyally towards the Member States.

Commentary:

See the commentary on Article 4bis.

AMENDMENT FORM

Suggestion for amendment of Article : 4

By Mr Kirkhope MEP

Status : Member

DELETE

Explanation (if any) :

AMENDMENT FORM

Suggestion for a new Article 4c:

By Elmar BROK, Jozsef SZAJER, Erwin TEUFEL, Jan Jacob VAN DIJK, René VAN DER LINDEN, Frantisek KROUPA, Jacques SANTER, John CUSHNAHAN, Antonio TAJANI, Teresa ALMEIDA GARRETT, Peter ALTMAIER, Jan FIGEL, Marco FOLLINI, Marietta GIANNAKOU, Piia Noora KAUPPI, Göran LENNMARKER, Hanja MAIJ-WEGGEN, Reinhard RACK, Joachim WÜRMELING

on behalf of the EPP Convention Group

Status: Members and Alternates

Text of the Praesidium

Proposed Amendments

Article 4c (New):
Union solidarity clause

- 1. If any of the Member States should be the object of a terrorist attack, the other Member States will afford the Member State so attacked, at the request of its civilian authorities, all military and other aid and assistance within their power. All the instruments available to the Union (including military resources, measures under the common police and judicial policy, as well as civil protection measures) shall be mobilised in order to avert, in accordance with the values of the Union, the terrorist threat in the territory of the Union, to protect the civilian population and the functioning of democratic institutions in the Union and to otherwise assist the Member State so attacked within its territory.*
- 2. In case of an armed attack, Union solidarity as described in paragraph 1 shall apply accordingly for the Member States which participate in the collective defence obligations set out the Protocol on Collective Defence annexed to this Constitu-*

tion.

Explanation:

Para 1:

- Such a **solidarity clause** was broadly supported in Convention Working Group VIII “Defence” (cf. its Final Report, para 57). We suggest that the best place for such a clause would be this Title of the Constitution, where the clause could directly follow the general provision on Union loyalty (the new Article 4b).

Para 2:

- Such an additional **collective defence clause**, which follows the spirit of Article V of the Brussels Treaty of 17 March 1948 establishing the Western European Union (WEU), found many supporters in Convention Working Group VIII “Defence” (cf. its Final Report, para 61 et seq.). We propose to include this additional clause in a way that it would allow **(only) those Member States which ratify a separate Protocol on Collective Defence** to support each other also by military means in a collective defence situation; other Member States would be free, but not obligated to join thus Protocol.

On the whole provision, see also Article 64 in the EPP Discussion Paper (Frascati text, as amended, 27 January 2003).

AMENDMENT FORM

Suggestion for a new Article 4b:

By Elmar BROK, Jozsef SZAJER, Erwin TEUFEL, René VAN DER LINDEN, Frantisek KROUPA, Jacques SANTER, John CUSHNAHAN, Antonio TAJANI, Teresa ALMEIDA GARRETT, Peter ALTMAIER, Jan FIGEL, Marco FOLLINI, Marietta GIANNAKOU, Piia Noora KAUPPI, Göran LENNMARKER, Hanja MAIJ-WEGGEN, Reinhard RACK, Joachim WÜRMELING

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).

AMENDMENT FORM

Suggestion for a new Article 4a:

By Elmar BROK, Erwin TEUFEL, Jan Jacob VAN DIJK, René VAN DER LINDEN, Frantisek KROUPA, Jacques SANTER, John CUSHNAHAN, Teresa ALMEIDA GARRETT, Peter ALTMAIER, Jan FIGEL, Marco FOLLINI, Marietta GIANNAKOU, Piia Noora KAUPPI, Hanja MAIJ-WEGGEN, Reinhard RACK, Joachim WÜRMELING

on behalf of the EPP Convention Group

Status: Member s and Alternates

Text of the Praesidium

Proposed Amendments

Article 4a (New):
Supremacy of Union law

Union law shall prevail over national law.

Explanation:

*The supremacy of Union law is the main constitutional principle of the acquis since 1964 and one of the foundations of the *acquis communautaire*. For reasons of legal certainty and constitutional logic, we suggest to include this principle already in the Title “Definition and objectives”, and not only in Title III on Union competences, as it is currently proposed by the text of the Praesidium – see Article 9(1) thereof. The principle of supremacy does not only play a role when the Union exercises its competences (= enacts secondary law), but also applies to the law of the Treaties (now the Constitution) itself (= primary law). This is already recognised in the wording of Article 9(1) of the Praesidium text, but not yet in the **positioning of this pivotal provision**. As an illustration for an alternative positioning, see also Article 62 in the EPP Discussion Paper (Frascati version, as amended, 27 January 2003).*

AMENDMENT FORM

Suggestion for amendment of Article 4

By: **Danuta Hübner**

Status: **Member**

<i>Text of the Praesidium</i>	<i>Proposed Amendments</i>
<u>Article 4: Legal personality</u> The Union shall have legal personality.	<u>Article 4: Legal personality</u> The Union shall have legal personality.
Explanation: 1. This Article would be brought forward and included into Article 1.	

AMENDMENT FORM

Suggestion for amendment of Article : 4

By Ms / Mr :

Ján FIGEL (Slovakia, National Council of the Slovak Republic)

Status : - Member - Alternate

Add to the sentence (para):

Article 4a (New):
Supremacy of Union law

Union law shall prevail over national law.

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.*

Article 4c (New):
Union solidarity clause

- 1. If any of the Member States should be the object of a terrorist attack, the other Member States will afford the Member State so attacked, at the request of its civilian authorities, all military and other aid and assistance within their power. All the instruments available to the Union (including military resources, measures under the common police and judicial policy, as well as civil protection measures) shall be mobilised in order to avert, in accordance with the values of the Union, the terrorist threat in the territory of the Union, to protect the civilian population and the functioning of democratic institutions in the Union and to otherwise assist the Member State so attacked within its territory.*

2. *In case of an armed attack, Union solidarity as described in paragraph 1 shall apply accordingly for the Member States which participate in the collective defence obligations set out the Protocol on Collective Defence annexed to this Constitution.*

Article 4d (New)
Symbols of Union identity

The seat of the Union shall be Brussels

The flag of the Union shall be a circle of twelve golden stars on a blue ground

The currency of the Union shall be the euro.

The anthem of the Union shall be the instrumental version of the Ode of Jopy from the Ninth Symphony by Ludwig van Beethoven.

9 May shall be celebrated as Union day.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article 4

By: Mr Józef Oleksy

Status: Member

Proposed Amendments:

Article 4: *delete*

Explanation:

Transferring to part II of the Treaty (see art. 281 and 282 of the current Treaty establishing the European Community)

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 4

Déposée par Madame ou Monsieur : Rt Hon David Heathcoat-Amory, MP

Qualité : - Membre *X* - Suppléant

4 Delete article

Explication éventuelle

The Union should not have legal personality. This is key in transforming an intergovernmental association of nations into a state. It also opens the way for aggrieved parties to challenge the Commission in the courts for failing to interpret the Constitution or Charter of Fundamental Rights in their favour, thus putting the ECJ into the role of legislative motor.

AMENDMENT FORM

Suggestion for amendment of Article :art. 4 bis

By Ms / Mr : Ernâni Lopes

Status : - Member -

Article 4 bis: Use of languages

The rules governing the languages of the Institutions of the Union shall be determined by the Council acting unanimously.

AMENDMENT FORM

Suggestion for amendment of Article : 4

By Mr Hain

Status : Member

As drafting, the Praesidium's text is fine, but note below.

Explanation (if any) :

We can only accept a single legal personality for the Union if the special arrangements for CFSP and some aspects of JHA are protected. But it will be for Part II of the Treaty to flesh out the details of the capacities conferred by legal personality.

AMENDMENT FORM

Suggestion for a new Article 6 a:

BY: BROK, SZAJER, AKCAM, TEUFEL, GIANNAKOU, VAN DER LINDEN, LAMASSOURE, BREJC, DEMETRIOU, FIGEL, LIEPINA, SANTER, KELAM, KROUPA, TAJANI, ALMEIDA GARRETT, ALTMAIER, KAUPPI, LENNMARKER, MAIJ-WEGGEN, RACK, VILEN, WÜRMELING

on behalf of the EPP Convention Group

Status: Members and Alternates

Proposed Amendments

Article 6 a (New) :

Symbols of Union identity

1. The flag of the Union shall be a circle of twelve golden stars on a blue ground.
2. The currency of the Union shall be the euro.
3. The anthem of the Union shall be the Ode of Joy from the Ninth Symphony by Ludwig van Beethoven.
4. 9 May shall be celebrated as Union day.

Explanation:

- *This provision should be included in the General Title of the Constitution in order to fill the constitutional text with a vision and to make the Union more visible to its citizens. See also Article 66 of the EPP Discussion Paper (Frascati text, as amended, 27 January 2003).*