

Amendments submitted by Teija Tiilikainen and Antti Peltomäki 17 February 2003

Articles 8 and 9 should be merged as follows:

Article 8: Fundamental principles (merges draft Articles 8 and 9)

1. The limits and use of Union competences are governed by the principles of **conferred powers**, subsidiarity **and** proportionality [...].
2. In accordance with the principle of **conferred powers**, the Union shall act within the limits of the competences conferred upon it by the Constitution to attain the objectives the Constitution sets out. Competences not conferred upon the Union by the Constitution remain with the Member States.

Whenever this Constitution has created for the Union powers within its internal system for the purpose of attaining a specific objective, the Union is empowered to enter into the international commitments necessary for attainment of that objective even in the absence of an express provision to that effect.

3. In accordance with the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.
4. In accordance with the principle of proportionality, the scope and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution.
5. [see our draft Article 4ter above]
6. **The Institutions shall apply the principles of subsidiarity and proportionality as laid down in the Protocol on the application of the principles of subsidiarity and propor-**

tionality annexed to the Constitution. The procedure set out in the Protocol shall enable national parliaments to ensure compliance with the principle of subsidiarity.

Commentary:

Title III on Union competences and actions should not 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. They should rather be placed in Title I as Article 4bis and Article 4ter as proposed under Article 4 in our proposals for amendments.

The fundamental principles concerning competence (the principles of conferred powers, subsidiarity and proportionality) and their application could then, for the sake of clarity and simplicity, be brought under a single article (Article 8, combining the current Articles 8 and 9).

The provision on the fundamental principles concerning competence should also lay down the principle, well-established by the case law of the European Court of Justice, that “whenever Community law has created for the institutions of the Community powers within its internal system for the purpose of attaining a specific objective, the Community is empowered to enter into the international commitments necessary for attainment of that objective even in the absence of an express provision to that effect” (Opinion 2/94 [1996] ECR I-1759, para. 26). It should in other words be recognised in the Constitution that in general the Union's competence can also be exercised by the way of conclusion of international agreements whenever that is necessary for the pursuance of the Union's objectives even if no external competence has expressly been provided for. Alternatively, this principle could be placed in Title V on instruments.

Article 9, paragraph 6, should be removed to Article 1, paragraph 2, and complemented with a reference to cultural and linguistic diversity.