

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 9

Déposée par Monsieur Olivier Duhamel

Qualité : - Membre

Article 9 Para 1 - modifier comme suit :

1. La Constitution et le droit adopté par les Institutions de l'Union dans l'exercice des compétences qui lui sont attribuées (trois mots supprimés) ont la primauté sur le droit des Etats membres.

Explication éventuelle :

AMENDMENT FORM

Suggestion for amendment of Article I-9, para 2:

By **BROK, SZAJER, AKCAM, GIANNAKOU, VAN DER LINDEN, LAMAS-SOURE, BREJC, DEMETRIOU, FIGEL, LIEPINA, SANTER, KELAM, KROUPA, TAJANI, ALMEIDA GARRETT, KAUPPI, LENNMARKER, MAIJ-WEGGEN, RACK, VILEN**

on behalf of the EPP Convention Group

Status :

Suggestion

Article I-9: Fundamental principles

2. Under the principle of conferral, the Union shall act within the limits of the competences conferred upon it by ~~the Member States in the Constitution~~ to attain the objectives set out in the Constitution. Competences not conferred upon the Union in the Constitution remain with the Member States.
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Explanation:

- *Article I-9.2 now states that not the Constitution itself, but the Member States confer competences on the Union. Both politically and legally, this would represent a serious step backwards. Politically, because this Constitution has the ambition to have two sources of legitimacy – the Member States and the peoples/citizens of Europe; it would therefore give the wrong political signal to state that only the Member States would have attributed competences to the Union. Legally, in any constitutional system – including the current EC Treaty –, also those from which constitutional competences derive are ultimately subject to the Constitution itself and can only depart from it by making use of the amendment procedures explicitly provided for in the Constitution. In a “Union governed by the rule of law”, the Member States should therefore not be seen as a “second source” of authority next to the Constitution. Otherwise, they may one day decide to take away some competences from the Union without bothering to use the procedures provided in the Constitution. It is of utmost important for the respect for the law of the Union, and for the special nature of the Union itself, that its competences result from the Constitution, and from nowhere else (see the present Article 5(1) EC). The Member States (and citizens) as authority behind the Constitution should and must be mentioned in the preamble and in the ratifying clauses – but not in the Title on competences. They are also mentioned as “Masters of the Treaties” in Article I-1, first paragraph. It is therefore strongly recommended to go back to the original text of the Praesidium in this respect.*

AMENDMENT FORM

Suggestion for amendment of Article : Article I-9.4: Fundamental principles

By Ms / Mr : Mr Jens-Peter Bonde

Status : **X- Member** - Alternate

4. Under the principle of proportionality, the scope and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution.

EU-LEGISLATION CONCERNING ENVIRONMENT, ANIMAL WELFARE, SAFETY AT WORK, HEALTH, CONSUMER PROTECTION AND SOCIAL STANDARDS SHALL ALWAYS BE MINIMUM RULES PERMITTING MEMBER STATES TO IMPOSE A HIGHER LEVEL OF PROTECTION. MEMBER STATES CAN INTRODUCE NATIONAL PROVISIONS FOR SUSTAINABLE DEVELOPMENT IN THE ABOVE MENTIONED AREAS BASED ON THE PRECAUTIONARY PRINCIPLE AS LAYED DOWN IN PART III OF THE CONSTITUTION.

THE CLAUSES ON NON-DISCRIMINATION AND EQUALITY ARE NOT HINDERING MEMBER STATES AND THE UNION TO APPLY PREFERENTIAL TREATMENT FOR AN UNDERREPRESENTED SEX OR ETHNICAL MINORITY.

The Institutions shall apply the principle of proportionality as laid down in the Protocol referred to in paragraph 3

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article I-9, para 2:

By Mr Andrew Duff, Mr Lamberto Dini, Mr Paul Helminger, Mr Rein Lang, Lord MacLennan

Status :

Suggestion

Article I-9: Fundamental principles

2. Under the principle of conferral, the Union shall act within the limits of the competences conferred upon it *by the Constitution* to attain the objectives set out in the Constitution. Competences not conferred upon the Union in the Constitution remain with the Member States.
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Explanation:

The Member States confer competences on the Union by the Constitution. The competences are then exercised under the provisions of the Constitution.

AMENDMENT FORM

PART I, TITLE III: UNION COMPETENCES - REVISED TEXT

Suggestion for amendment of Article I-9: fundamental principles

By: M.J.CHABERT
M.M.DAMMEYER
M.P.DEWAEL
Ms. C.du GRANRUT
M.C.MARTINI
M.R.VALCARCEL SISO

Status : - Member - ~~Alternate~~ — - Observer

Amend Article I-9 §3:

National parliaments **and the Committee of the Regions** shall ensure compliance with that principle of subsidiarity in accordance with the procedure set out in the Protocol.

Article I-9 – add §5:

5. In the delimitation and exercise of competences, the Union shall respect the internal distribution of powers between the different institutional levels of the Member States, as laid down in their respective constitutions."

FICHE AMENDEMENT

Proposition d'amendement à l'Article:

I-9

Déposée par Monsieur:

Erwin Teufel

Qualité:

Membre

Texte du Praesidium

- (3) Nach dem Subsidiaritätsprinzip wird die Union in den Bereichen, die nicht in ihre ausschließliche Zuständigkeit fallen, nur tätig, sofern und soweit die Ziele der in Betracht gezogenen Maßnahmen von den Mitgliedstaaten weder auf zentraler noch auf regionaler oder lokaler Ebene ausreichend erreicht werden können, sondern vielmehr wegen ihres Umfangs oder ihrer Wirkungen auf Unionsebene besser erreicht werden können.

Die Organe der Union wenden das Subsidiaritätsprinzip nach dem Protokoll über die Anwendung der Grundsätze der Subsidiarität und der Verhältnismäßigkeit im Anhang zur Verfassung an. Die nationalen Parlamente achten auf die Einhaltung des Subsidiaritätsprinzips nach dem in diesem Protokoll vorgesehenen Verfahren.

Amendement proposé

- (3) Nach dem Subsidiaritätsprinzip wird die Union in den Bereichen, die nicht in ihre ausschließliche Zuständigkeit fallen, nur tätig, sofern und soweit die Ziele der in Betracht gezogenen Maßnahmen von den Mitgliedstaaten weder auf zentraler noch auf regionaler oder lokaler Ebene ausreichend erreicht werden können, sondern vielmehr wegen ihres Umfangs oder ihrer Wirkungen auf Unionsebene **wirksamer** erreicht werden können.

Die Organe der Union wenden das Subsidiaritätsprinzip nach dem Protokoll über die Anwendung der Grundsätze der Subsidiarität und der Verhältnismäßigkeit im Anhang zur Verfassung an. Die nationalen Parlamente achten auf die Einhaltung des Subsidiaritätsprinzips nach dem in diesem Protokoll vorgesehenen Verfahren.

Begründung:

Um zu erreichen, dass die Union nur dann handelt, wenn es wirklich erforderlich ist, erscheint es angebracht, die zweite Bedingung des Subsidiaritätsgrundsatzes zu präzisieren. Der letzte Halbsatz sollte lauten: „... wegen ihres Umfangs oder ihrer Wirkungen auf Unionsebene wirksamer erreicht werden können.“, um dieser Bedingung mehr Gewicht zu verleihen.

AMENDMENT FORM

Suggestion for amendment of Article : art. I-9°

By Mr : Ernâni Lopes and Manuel Lobo Antunes

Status : Member and alternate

Article 9: Fundamental principles

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act within the limits of the competences conferred upon it by the Member States in the Constitution to attain the objectives set out in the Constitution. Competences not conferred upon the Union in the Constitution remain with the Member States.
3. Under 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, ~~either at central level or at regional and local level,~~ but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

Explanation : we strongly favour the formulation of the principle of subsidiarity stated in the current E.C.Treaty.

The Union Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Constitution. National Parliaments shall ensure compliance with that principle in accordance with the procedure set out in the Protocol.

4. Under the principle of proportionality, the scope and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution.

The Institutions shall apply the principle of proportionality as laid down in the Protocol referred to in paragraph 3.

Explanation (if any) :

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Artigo 9, n.º6

Déposée par Monsieur : Luís QUEIRÓ

Qualité : Suppléant

6. A União respeita a identidade nacional dos seus Estados-Membros associada à respectiva estrutura fundamental e às funções essenciais de um Estado **soberano**, nomeadamente a sua estrutura política e constitucional, incluindo a organização dos poderes públicos a nível nacional, regional e local.

Explication éventuelle :

Trata-se de uma precisão destinada a evitar a confusão com Estado federado.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Article 9, paragraphe 6

Déposée par Monsieur : Luís QUEIRÓ

Qualité : Suppléant

6. L'Union respecte l'identité nationale de ses Etats membres liée à leur structure fondamentale et aux fonctions essentielles d'un Etat souverain, et notamment sa structure politique et constitutionnelle, y compris l'organisation des pouvoirs publics au niveau national, régional et local.
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Explication :

Il s'agit d'éviter l'éventuelle confusion avec un Etat fédéré.

AMENDMENT FORM

Suggestion for amendment of Article : 9 (6)

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 9

Application of fundamental principles

6. The Union shall respect the national identities of its Member States, inherent in their fundamental structures and essential State functions, especially their political structure and **their constitutional law**, including the organisation of public administration at national, regional and local level.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 9, point 6

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 9

Application des principes fondamentaux

6. L'Union respecte l'identité nationale de ses États membres liée à leur structure fondamentale et aux fonctions essentielles d'un État, et notamment sa structure politique et **son droit constitutionnel**, y compris l'organisation des pouvoirs publics au niveau national, régional et local.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Artigo 9, n.º5

Déposée par Monsieur : Luís QUEIRÓ

Qualité : Suppléant

5. Em conformidade com o princípio da cooperação leal, os Estados-Membros facilitam à União o cumprimento da sua missão e abstêm-se de qualquer medida susceptível de pôr em risco a realização dos seus objectivos. A União actua com lealdade para com os Estados-Membros, tendo em consideração os seus interesses vitais e no rigoroso respeito dos princípios da igualdade e da não discriminação entre eles.

Explication éventuelle :

Trata-se de dar conteúdo ao princípio da lealdade da União para com os Estados-Membros.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Article 9, paragraphe 5

Déposée par Monsieur : Luís QUEIRÓ

Qualité : Suppléant

5. Conformément au principe de coopération loyale, les Etats membres facilitent à l'Union l'accomplissement de sa mission et s'abstiennent de toutes mesures susceptibles de mettre en péril la réalisation **de ses objectifs**. L'Union agit avec loyauté vis-à-vis des Etats Membres, **en prenant en considération leurs intérêts vitaux et dans le rigoureux respect des principes de l'égalité et de non-discrimination entre eux.**
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Explication :

Il s'agit de donner de la substance au principe de la coopération loyale vis-à-vis des Etats Membres.

AMENDMENT FORM

Suggestion for amendment of Article : 9 (2)

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

Members Maria Eduarda Azevedo, Alberto Costa

Alternates António Nazaré Pereira, Guilherme d'Oliveira Martins

Status :

Article 9

Application of fundamental principles

2. (...) The procedure set out in the Protocol shall give the national parliaments of the Member States **the right** to ensure compliance with the principle of subsidiarity.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 9, point 2

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

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

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

Article 9

Application des principes fondamentaux

2. (...) La procédure prévue dans ce Protocole **octroie** aux Parlements nationaux des États membres **le droit** de veiller au respect du principe de subsidiarité.

FICHE AMENDEMENT

Proposition d'amendement à l'Article: 9

Déposée par Monsieur: Erwin Teufel

Qualité: Membre

Texte du Praesidium

(6) Die Union achtet die nationale Identität ihrer Mitgliedstaaten, die mit deren grundlegenden Struktur und den wesentlichen Aufgaben eines Staates - insbesondere seiner politischen und verfassungsrechtlichen Struktur einschließlich der Organisation der staatlichen Behörden auf nationaler, regionaler und kommunaler Ebene - zusammenhängt.

Amendement proposé

(6) Die Union achtet die nationale Identität ihrer Mitgliedstaaten, **die auch deren innerstaatlichen Aufbau, insbesondere die innerstaatliche Kompetenzverteilung, die regionale Gliederung, die kommunale Selbstverwaltung und die rechtliche Stellung der Kirchen und Religionsgemeinschaften umfasst.**

Begründung:

Der Bezug auf die nationale, regionale und kommunale Ebene wird in der vorliegenden Formulierung nicht hinreichend deutlich.

Bezüglich der Stellung der Kirchen und Religionsgemeinschaften könnte an Stelle ihrer Erwähnung in Abs. 6 der volle Wortlaut der Erklärung Nr. 11 (Amsterdamer Vertrag) zum Status der Kirchen und weltanschaulichen Gemeinschaften als Absatz 7 in den Art. 9 des Verfassungsvertrags aufgenommen werden.

Hinweis:

Der Begriff „staatliche Behörden“ ist eine missverständliche Übersetzung aus dem Französischen, wo von „pouvoirs publics“ die Rede ist. Es müsste richtig übersetzt heißen „Organisation der öffentlichen Gewalt“.

FICHE AMENDEMENT

Proposition d'amendement à l'Article: 9

Déposée par Monsieur: Erwin Teufel

Qualité: Membre

<i>Texte du Praesidium</i>	<i>Amendement proposé</i>
(6) L'Union respecte l'identité nationale de ses Etats membres liée à leur structure fondamentale et aux fonctions essentielles d'un Etat, et notamment sa structure politique et constitutionnelle, y compris l'organisation des pouvoirs publics au niveau national, régional et local.	(6) L'Union respecte l'identité nationale de ses Etats membres qui comporte également leur structure territoriale, et notamment la délimitation nationale des compétences, le découpage régional, l'autonomie locale ainsi que le statut juridique des églises et associations religieuses.

Explication:

La référence à l'échelon national, régional et local ne devient pas suffisamment claire dans le texte original.

En ce qui concerne la position des églises et associations religieuses, au lieu de les mentionner dans l'alinéa 6, on pourrait également choisir le texte de la déclaration no. 11 (Traité d'Amsterdam) sur le statut des églises et associations spirituelles comme un nouvel alinéa 7 de l'article 9 du Traité constitutionnel.

Commentaire:

Dans le texte allemand, le terme « staatliche Behörden » est une faute de traduction du texte français qui parle de « pouvoirs publics ». Il faudrait traduire ce terme en allemand par „Organisation der öffentlichen Gewalt“.

Proposition d'amendement à l'Article 9

Déposée par Madame Elena Paciotti et Monsieur Valdo Spini, Suppléants

IT Version

Articolo 9: Applicazione dei principi fondamentali

1. La Costituzione e il diritto adottato dalle istituzioni dell'Unione nell'esercizio delle competenze che le sono attribuite (**3 parole soppresse**) hanno prevalenza sul diritto degli Stati membri.
2. Nell'esercizio delle competenze (**2 parole soppresse**) dell'Unione, le istituzioni applicano *i principi di sussidiarietà e di proporzionalità previsti dall'apposito* Protocollo allegato alla Costituzione *e secondo le procedure ivi definite*. (**una frase soppressa**).
3. **Soppresso.**
4. Gli Stati membri adottano tutte le misure di carattere generale e particolare atte ad assicurare l'esecuzione degli obblighi derivanti dalla Costituzione determinati dagli atti delle istituzioni dell'Unione.
5. **Soppresso**
6. L'Unione rispetta (**18 parole soppresse**) la (**1 parola**) struttura politica e costituzionale **degli** Stati membri, compresa l'organizzazione dei poteri pubblici a livello nazionale, regionale e locale.

Explication éventuelle:

È opportuna la sintesi in un testo costituzionale. I paragrafi 2 e 3 possono essere unificati perché fanno rinvio alle disposizioni del medesimo protocollo e dunque sono superflue ulteriori precisazioni. Il paragrafo 5 è assorbito dalla modifica proposta al paragrafo 5 dell'articolo 8 e la prima parte del paragrafo 6 è già compresa nel paragrafo 2 dell'articolo 1.

Proposition d'amendement à l'Article 9

Déposée par Madame Elena Paciotti et Monsieur Valdo Spini, Suppléants

EN Version

Article 9: Application of fundamental principles

1. The Constitution, and law adopted by the Union Institutions in exercising competencies conferred on it (*3 words deleted*), shall have primacy over the law of the Member States.

2. In exercising the Union's competencies, the Institutions shall apply the principle of subsidiarity *and proportionality as laid down in the Protocol attached to the Constitution and in accordance with the procedures defined therein*.

3. *Suppressed.*

4. 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.

5. *Suppressed*

6. The Union shall respect the political and constitutional structure of its Member States, including the organisation of public administration at national, regional and local level.

Explication éventuelle:

A constitutional text should be as brief as possible. Paragraphs 2 and 3 can be combined because they both refer to provisions in the protocol and thus one paragraph is enough. Paragraph 5 is incorporated in the amendment proposed for paragraph 5 of article 8, and the first part of 6 is already included in paragraph 2 of article 1.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Artigo 8, n.º3

Déposée par Monsieur : Luís QUEIRÓ

Qualité : Suppléant

3. De acordo com o princípio da subsidiariedade, nos domínios que não sejam da sua competência exclusiva, a União intervém apenas quando, e na medida em que, os objectivos da acção projectada não possam ser atingidos de forma suficiente pelos Estados-Membros, **e possam antes**, em virtude das dimensões ou dos efeitos da acção projectada, ser alcançados mais adequadamente a nível da União.

Explication éventuelle :

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Article 8, paragraphe 3

Déposée par Monsieur : Luís QUEIRÓ

Qualité : Suppléant

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3. Selon le principe de subsidiarité, dans les domaines qui ne relèvent pas de sa compétence exclusive, l'Union intervient seulement et dans la mesure où les objectifs de l'action envisagée ne peuvent pas être atteints de manière suffisante par les Etats membres, mais peuvent, en raison des dimensions ou des effets de l'action envisagée, **évalués préalablement**, être mieux obtenus au niveau de l'Union.

Explication:

FICHE AMENDEMENT

Proposition d'amendement à l'Article: 8

Déposée par Monsieur: Erwin Teufel

Qualité: Membre

Texte du Praesidium

- (2) Nach dem Grundsatz der begrenzten Einzelermächtigungen wird die Union innerhalb der Grenzen der Zuständigkeiten tätig, die ihr von der Verfassung zur Verwirklichung der in dieser niedergelegten Ziele zugewiesen werden. Alle der Union nicht durch die Verfassung zugewiesenen Zuständigkeiten verbleiben bei den Mitgliedstaaten.
- (3) Nach dem Subsidiaritätsprinzip wird die Union in den Bereichen, die nicht in ihre ausschließliche Zuständigkeit fallen, nur tätig, sofern und soweit die Ziele der in Betracht gezogenen Maßnahmen auf Ebene der Mitgliedstaaten nicht ausreichend erreicht werden können, wegen ihres Umfangs oder ihrer Wirkungen aber besser auf Unionsebene erreicht werden können.
- (5) Nach dem Grundsatz der loyalen Zusammenarbeit achten die Mitgliedstaaten einander und unterstützen

Amendement proposé

- (2) Nach dem Grundsatz der begrenzten Einzelermächtigungen wird die Union innerhalb der Grenzen der Zuständigkeiten tätig, die ihr von der Verfassung zur Verwirklichung der in dieser niedergelegten Ziele zugewiesen werden. Alle der Union nicht durch die Verfassung zugewiesenen Zuständigkeiten verbleiben bei den Mitgliedstaaten. **Maßnahmen der Union müssen in allen ihren Teilen von diesen Befugnissen abgedeckt sein.**
- (3) **In den Bereichen, die nicht in ihre ausschließliche Zuständigkeit fallen, wird die Union nach dem Subsidiaritätsprinzip** nur tätig, sofern und soweit die Ziele der in Betracht gezogenen Maßnahmen auf der Ebene der Mitgliedstaaten **einschließlich ihrer regionalen und lokalen Gebietskörperschaften** nicht ausreichend erreicht werden können **und daher** wegen ihres Umfangs oder ihrer Wirkungen **wirksamer** auf Unionsebene erreicht werden können.
- (5) Nach dem Grundsatz der loyalen Zusammenarbeit achten **die Union und** die Mitgliedstaaten einander und

sich gegenseitig bei der Erfüllung der
sich aus der Verfassung ergebenden Auf-
gaben.

unterstützen sich gegenseitig bei der
Erfüllung der sich aus der Verfassung
ergebenden Aufgaben.

Begründung:

Abs. 2

Klarstellung im Sinne einer klaren Kompetenzordnung.

Abs. 3

Das Subsidiaritätsprinzip bedarf der Präzisierung auch unter Berücksichtigung der
Leistungsfähigkeit der Regionen und Kommunen.

Abs. 5

Im deutschen Text wurden bei der Übersetzung die Worte „die Union und“ weggelassen.

FICHE AMENDEMENT

Proposition d'amendement à l'Article: 8

Déposée par Monsieur: Erwin Teufel

Qualité: Membre

Texte du Praesidium

Amendement proposé

- | | |
|---|--|
| (2) Selon le principe d'attribution, l'Union agit dans les limites des compétences qui lui sont attribuées par la Constitution en vue d'atteindre les objectifs qu'elle établit. Toute compétence non attribuée à l'Union par la Constitution appartient aux Etats membres. | (2) Selon le principe d'attribution, l'Union agit dans les limites des compétences qui lui sont attribuées par la Constitution en vue d'atteindre les objectifs qu'elle établit. Toute compétence non attribuée à l'Union par la Constitution appartient aux Etats membres. Les actions de l'Union doivent être entièrement couvertes de ces attributions. |
| (3) Selon le principe de subsidiarité, dans les domaines qui ne relèvent pas de sa compétence exclusive, l'Union intervient seulement et dans la mesure où les objectifs de l'action envisagée ne peuvent pas être atteints de manière suffisante par les Etats membres, mais peuvent, en raison des dimensions ou des effets de l'action envisagée, être mieux obtenus au niveau de l'Union. | (3) Selon le principe de subsidiarité, dans les domaines qui ne relèvent pas de sa compétence exclusive, l'Union intervient seulement et dans la mesure où les objectifs de l'action envisagée ne peuvent pas être atteints de manière suffisante par les Etats membres y compris leur collectivités régionales et locales , mais peuvent, en raison des dimensions ou des effets de l'action envisagée, être obtenus plus effectivement au niveau de l'Union. |
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Explication:

al. 2

Précision en vue d'une délimitation claire des compétences.

al. 3

Le principe de subsidiarité a besoin de précision, en prenant notamment en compte les capacités des collectivités régionales et locales.

Commentaire:

Dans le texte allemand de l'alinéa 5 il y a une faute de traduction: les mots « l'Union et » n'y sont pas mentionnés.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Artigo 8, n.º4

Déposée par Monsieur : Luís QUEIRÓ

Qualité : Suppléant

4. De acordo com o princípio da proporcionalidade, o conteúdo e a forma da acção da União não **devem exceder** o necessário para atingir os objectivos da Constituição.

Explication éventuelle :

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Article 8, paragraphe 4

Déposée par Monsieur : Luís QUEIRÓ

Qualité : Suppléant

4. Selon le principe de proportionnalité, le contenu et la forme de l'action de l'Union **ne doivent pas excéder** ce qui est nécessaire pour atteindre les objectifs **du Traité**.
-

Explication :

Proposition d'amendement à l'Article 8, Par. 5

Déposée par Madame Elena Paciotti et Monsieur Valdo Spini, Suppléants

IT Version

Articolo 8: Principi fondamentali

5. Secondo il principio della cooperazione leale, l'Unione e gli Stati membri si rispettano e si assistono reciprocamente nell'adempimento dei compiti derivanti dalla Costituzione. ***Gli Stati membri si astengono da qualsiasi misura che rischi di compromettere la realizzazione degli scopi della Costituzione.***

Explication éventuelle:

È opportuno che in un testo costituzionale non vi siano ripetizioni, sicché si propone di trasferire qui, in sintesi, quanto scritto nel paragrafo 5 dell'articolo 9.

Proposition d'amendement à l'Article 8, Par. 5

Déposée par Madame Elena Paciotti et Monsieur Valdo Spini, Suppléants

EN Version

Article 8: Fundamental principles

5. In accordance with the principle of loyal co-operation, the Union and the Member States shall, in full mutual respect, assist each other to carry out tasks which flow from the Constitution. *Member States shall abstain from any measures that may compromise the fulfilment of the aims of the Constitution.*

Explication éventuelle:

A constitutional text should not repeat itself, thus we have incorporated a synopsis of paragraph 5 article 9 here.

AMENDMENT FORM

Suggestion for amendment of Article : 8

By Helle Thorning-Schmidt and Henrik Dam Kristensen

Status : Members

Article 8.6

'In accordance with the principles of openness and transparency, the EU and its institutions must must perform their tasks with the highest level of openness and transparency'.

Explanation (if any) :

To follow the logic of Article 8, there have to be a special paragraph on openness and transparency.

AMENDMENT FORM

Suggestion for amendment of Article : 8

By Helle Thorning-Schmidt and Henrik Dam Kristensen

Status : Members

Article 8,1:

'The limits and use of Union competencies are governed by the principles of conferral, subsidiarity, proportionality, loyal co-operation, *and the highest level of openness and transparency*'.

Explanation (if any) :

Openness and transparency should be added to the principles of the EU. This also supports the conclusions reached at the Laeken summit.

AMENDMENT FORM

Suggestion for amendment of Article 8:

By Mr. Peter SKAARUP

Status: Member

Ad "integration" in article 8, item 1:

The limits and use of Union competences are governed by the principles of conferral, subsidiarity, proportionality, **integration** and loyal cooperation.

Ad to article 8, item 3 - 5, as a new item 6:

In accordance with the principle of integration, environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities referred to in Part 3, in particular with a view to promoting sustainable development.

Explanatory note

1. The integration principle is part of the existing Treaty (article 6, EC Treaty).
2. The integration principle is currently found in the same part of the EC Treaty as the principles of subsidiarity (art. 5), proportionality (art. 5) and loyal cooperation (art. 10).
3. These fundamental principles are all found in a prominent place at the front of the Treaty.
4. The integration principle and the subsidiarity principle were both first found in the environment title of the Treaty. Both have been moved forward to a prominent place in the Treaty, subsidiarity by the Treaty of Maastricht, integration by the Treaty of Amsterdam.
5. The integration principle is an essential support to the Union's objective of sustainable development.
6. To treat the integration principle differently from other established fundamental principles and to give it a less prominent place in the Constitution than it now has in the Treaty would be a giant step backward.
7. "Part 3" refers to that portion in the new Constitutional Treaty dealing with the policies and activities in which the EU will play a role.

AMENDMENT FORM

Suggestion for amendment of Article : 8

By Ms / Mr : Marie Nagy

Status : - Member - Alternate

TITLE III: The Union's competences

Article 8: Fundamental principles

1. The limits and use of Union competences are governed by the principles of conferral, subsidiarity, proportionality, **cohérence, integration** and loyal cooperation.
2. In accordance with the principle of conferral, 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.
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.
Member States shall be allowed to take further, non-discriminatory measures for the conservation and protection of the environment provided they are consistent with the objectives of the Constitution.
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.

4 bis. Selon le principe e cohérence, dans la définition et la mise en oeuvre de ses politiques et actions, l'Union veille à ce qu'elles soient compatibles entre elles et prennent en considération l'ensemble des objectives de l'Union.

4 third. In accordance with the principle of integration, environmental protection requirements must be integrated into the definition and implementation of the Unions policies and activities referred to in Part 3, in particular with a view to promoting

sustainable development.

5. 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.

Explanation (if any) :

FICHE AMENDEMENT

Proposition d'amendement à l'Article 9

Déposée par Monsieur Dominique de Villepin

Qualité : Membre

Article 9: Application des principes fondamentaux

1. La Constitution et le droit adopté par les Institutions de l'Union dans l'exercice des compétences qui lui sont attribuées par celle-ci ont la primauté sur le droit des Etats membres.
2. Dans l'exercice des compétences non exclusives de l'Union, les Institutions appliquent le principe de subsidiarité conformément au Protocole sur l'application des principes de subsidiarité et de proportionnalité annexé à la Constitution. La procédure prévue dans ce Protocole permet aux Parlements nationaux des Etats membres de veiller au respect du principe de subsidiarité.¹
3. Dans l'exercice des compétences de l'Union, les Institutions appliquent le principe de proportionnalité conformément à ce même Protocole.
4. Les Etats membres prennent toutes mesures générales ou particulières propres à assurer l'exécution des obligations découlant de la Constitution ou résultant des actes des Institutions de l'Union.
5. Conformément au principe de coopération loyale, les Etats membres facilitent à l'Union l'accomplissement de sa mission et s'abstiennent de toutes mesures susceptibles de mettre en péril la réalisation des buts de la Constitution. L'Union agit avec loyauté vis-à-vis des Etats Membres.
6. L'Union respecte l'identité nationale de ses Etats membres liée à leur structure fondamentale et aux fonctions essentielles d'un Etat, et notamment sa structure politique et constitutionnelle, y compris l'organisation des pouvoirs publics au niveau national, régional et local.

¹ Une nouvelle version du Protocole sera diffusée prochainement.

Explication éventuelle :

FICHE AMENDEMENT

Proposition d'amendement à l'Article 8

Déposée par Monsieur Dominique de Villepin

Qualité : Membre

Article 8: Principes fondamentaux

1. La délimitation et l'exercice des compétences de l'Union sont régis par les principes d'attribution, de subsidiarité, de proportionnalité et de coopération loyale.
2. Selon le principe d'attribution, l'Union agit dans les limites des compétences qui lui sont attribuées par la Constitution en vue d'atteindre les objectifs qu'elle établit. Toute compétence non attribuée à l'Union par la Constitution appartient aux Etats membres.
3. Selon le principe de subsidiarité, dans les domaines qui ne relèvent pas de sa compétence exclusive, l'Union intervient seulement et dans la mesure où les objectifs de l'action envisagée ne peuvent pas être atteints de manière suffisante par les Etats membres, **et peuvent donc**, en raison des dimensions ou des effets de l'action envisagée, être mieux obtenus au niveau de l'Union.
4. Selon le principe de proportionnalité, le contenu et la forme de l'action de l'Union n'excèdent pas ce qui est nécessaire pour atteindre les objectifs de la Constitution.
5. Selon le principe de coopération loyale, l'Union et les Etats membres se respectent et s'assistent mutuellement dans l'accomplissement des missions découlant de la Constitution.

Explication éventuelle :

AMENDMENT FORM

Suggestion for amendment of Article : 9.6

By Lord Tomlinson

Status : Alternate

Insert the words "their sovereignty" in the first line after the words..."inherent in". There needs also to be clear reference to the unambiguous responsibility of the member state for matters of national security and the promotion and maintenance of law and order

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 9.5

By Lord Tomlinson

Status : - Alternate

Propose deletion of 9.5.

Explanation (if any) :

Unnecessarily repeats the principle of loyal cooperation while simultaneously extending it. Principle of loyal cooperation is adequately covered in Article 8.5 already

AMENDMENT FORM

Suggestion for amendment of Article : 9.1

By Lord Tomlinson

Status : - Alternate

If I read this correctly, especially "...and law adopted by the Union institutions in exercising competence...". The effect is both to codify community care and assert its automatic primacy over the law of member states. This is not only too broad, it is also not in all circumstances true.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 9

By Mr : Edmund Wittbrodt

Status : - Member

~~1. The Constitution, and law adopted by the Union Institutions in exercising competences conferred on it by the Constitution, shall have primacy over the law of the Member States.~~

1. Union law prevails over national law.

2. In exercising the Union's non – exclusive competences, the **Union** Institutions ~~shall~~ **should** apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Constitution. The **political early warning** procedure set out in the Protocol ~~shall~~ **should** enable national parliaments to ensure compliance with the principle of subsidiarity.

6. The Union ~~shall~~ **should** respect the national identities of its Member States, **regional and local self-government, their choices regarding . language, and the legal status of churches and religious societies** ~~inherent in their fundamental structures and essential State functions, especially their political and constitutional structure, including the organisation of public administration at national, regional and local level.~~

Explanation (if any) :

This follows the EPP proposal.

AMENDMENT FORM

Suggestion for amendment of Article 9

By **Mr Andrew Duff, Mr Dimitrij Rupel, Mr Paul Helminger, Lord MacLennan and Mr István Szent-Iványi and Mr Lamberto Dini.**

Status: **Members and alternate members.**

Article 9: Application of fundamental principles

- 9.1 The Constitution, and law adopted by the Union institutions in exercising competences conferred on it by the Constitution, shall have primacy over the law of the Member States.
- 9.2 ***The Union*** shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Constitution. The procedure set out in the Protocol shall enable national parliaments to ensure compliance with the principle of subsidiarity.
- 9.3 In exercising the Union's competences, the *institutions* shall apply the principle of proportionality as laid down in the same Protocol.
- 9.4 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*.
- 9.5 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.
- 9.6 The Union shall respect ***the political and constitutional structures of the Member States***, including the organisation of public administration at national, regional and local level.

Explanation:

9.2 This amendment seeks to extend the application of the principle of subsidiarity to the exclusive competences of the Union. It has always been anomalous that subsidiarity should not inform the decisions of the Union in the areas where it enjoys the greatest concentration of power. The derogation, introduced by the Maastricht Treaty, seems out of sympathy with a Union that is seeking to be more consultative, to give greater recognition to the role of regional and local authorities and to decentralise the management of some of its common policies.

In Article 11 we will try to widen the definition of exclusivity to include the application of the four freedoms to internal market matters.

The integration of the Charter also serves to redefine the concept of subsidiarity to embrace the relationship between the individual and the Union authority.

The use of the term Union's 'Institutions' should be minimised. The institutions act for and on behalf of the Union. (In any case here and elsewhere they deserve only lower case.)

9.5 We drop the sentence: "The Union shall act loyally towards the Member States". The Constitution should not legitimise the notion that there is or can be a separation of interests between that of the Union on the one hand and its collective Member States on the other. In the emerging federal constitutional order of states there is a unified purpose and identity and a single institutional system.

9.6 The Praesidium's formulation is repetitive (see their Article 1.2 and our 2.2) in its respect for the national identities of the states. It also makes a presumption about the concept of nation state sovereignty which is not universally shared today. Our amendment is shorter, clearer, simpler and more accurate.

AMENDMENT FORM

Suggestion for amendment of Article : 8

By Mr : Edmund Wittbrodt

Status : - Member

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~~ **more efficiently** achieved at Union level.

Explanation (if any) :

This follows the EPP proposal.

AMENDMENT FORM

Suggestion for amendment of Article : 8

By Lord Tomlinson

Status : -- Alternate

Seems alright but I believe there could be further clarification by drafting changes to Articles 8.1 and 8.2.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article 8

By **Mr Andrew Duff, Mr Dimitrij Rupel, Mr Paul Helminger, Lord MacLennan and Mr István Szent-Iványi and Mr Lamberto Dini.**

Status : **Members and alternate members.**

Article 8: Fundamental principles

- 8.1 The *exercise* of Union competences are governed by the principles of conferral, subsidiarity, proportionality and *loyalty*.
- 8.2 In accordance with the principle of conferral, 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 *under the provisions of this* Constitution remain with the Member States.
- 8.3 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, *including where appropriate their regional and local authorities*, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.
- 8.4 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.
- 8.5 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.

Explanation:

8.1 *We should try to avoid excessively legalistic terminology. The Praesidium's choice of 'limits and use' seems clumsy, and 'loyalty' is better than 'loyal cooperation'.*

'Attribution' may indeed be better than 'conferral'.

8.2 The proposed amendment more accurately reflects the status and function of the Constitution.

8.3 The inclusion of regional and local authorities recognises the importance of sub-state levels of government while not exonerating the Member States from their obligations under the Constitution.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Art. 9 par. 6

Déposée par Madame Cristiana MUSCARDINI

Qualité : Membre

Aggiungere dopo « **essenziali di uno Stato** » :

« **sovrano** »

Explication éventuelle :

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Art. 9 par. 6

Déposée par Madame Cristiana MUSCARDINI

Qualité : Membre

Dopo la parola locale aggiungere:

"e territoriale"

AMENDMENT FORM

Suggestion for amendment of Article : 9 (Application of basic principles)

By Mr : Jan FIGEL

Status : - Member - Alternate

To the end of the paragraph 6 will be added the sentence:

The Union does not adopt any legal acts which are not in line with the principle of subsidiarity in the cultural and ethical matters.

Explanation (if any) :

The amendment is based on the principle of subsidiarity. Moreover National Council of the Slovak Republic has passed the Declaration regarding the sovereignty of the member states of the European Union in the cultural and ethical issues, on January, 30, 2002.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Art. 9 par. 5

Déposée par Madame Cristiana MUSCARDINI

Qualité : Membre

Dopo la parola costituzione aggiungere:

"gli Stati membri hanno il diritto di non partecipare a decisioni o iniziative che possono ledere il loro legittimi interessi nazionali"

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Art. 9 par. 4

Déposée par Madame Cristiana MUSCARDINI

Qualité : Membre

Aggiungere dopo « **delle Istituzioni dell'Unione** » :

« solo nella misura in cui questi obblighi non siano contrari alle disposizioni costituzionali degli Stati membri »

Explication éventuelle :

FICHE AMENDEMENT

Proposition d'amendement à l'Article : Art. 9 par. 1

Déposée par Madame Cristiana MUSCARDINI

Qualité : Membre

Sostituire a « **sul diritto** » con « **sulle leggi** ».

Aggiungere dopo « **degli Stati membri** » :
« **nella misura in cui non sono contrarie alle disposizioni costituzionali nazionali.** »

Explication éventuelle :

Fiche amendement

Proposition d'amendement à l'article : 9

Déposée par MM. Santer, Helminger, Fayot

En qualité de MEMBRES

Il est proposé de rédiger le premier paragraphe de cet article de la manière suivante :

1. Le droit de l'Union a la primauté sur le droit des Etats membres.

Explication :

Cette formulation est plus claire et englobe l'ensemble des aspects de la relation du droit communautaire et du droit des Etats membres, établissant ainsi un fondement solide pour la hiérarchie des normes au sein de l'Union.

AMENDMENT FORM

Suggestion for amendment of Article 9.1 and 9.6:

By Mrs Lena Hjelm-Wallén and Mr Sven-Olof Petersson, government representatives and Mr Sören Lekberg, Mr Göran Lennmarker, Mr Kenneth Kvist and Mr Ingvar Svensson, national parliament representatives.

Status : - **Members: Hjelm-Wallén, Lekberg and Lennmarker**
 - **Alternates: Petersson, Kvist and Svensson**

1.¹ The Union shall respect the national identities of its Member States, inherent in their fundamental structures and essential State functions, especially their political and constitutional structure, including the organisation of public administration at national, regional and local level.

2. The Constitution, and law adopted by the Union Institutions in exercising competences conferred on it by the Constitution, shall have primacy over the law of the Member States.²

Explanation

¹ Paragraph 6 should become Paragraph 1.

² Reservation: The principle of primacy can only apply to Union laws that can produce direct effect within the legal orders of the Member States. Directly effective rights are only enforceable against those on whom the provisions relied upon imposes a correspondent duty (the distinction of vertical/horizontal effect).

AMENDMENT FORM

Suggestion for amendment of Article : 9

By Ms : Giannakou Marietta

Status : - Member

Article 9: Application of fundamental principles

2. In exercising the Union's non-exclusive competencies, the Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Constitution. ~~The procedure set out in the Protocol shall enable national parliaments to ensure compliance with the principle of subsidiarity.~~

6. The Union shall respect the national identities of its Member States, inherent in their fundamental structures and essential State functions, ~~especially their political and constitutional structure,~~ including the organisation of public administration at national, regional and local level.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article: 9

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 9: Application of fundamental principles

1. The Treaty, and law adopted by the Institutions of the Europe of Democracies in exercising competences conferred on it by the Treaty, respects the national constitutions and the legislative authority of the national parliaments.
2. In exercising the competences of the Europe of Democracies, the Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty. National parliaments shall have the authority to ensure compliance with the principle of subsidiarity. ¹
3. In exercising the competences of the Europe of Democracies, the Institutions shall apply the principle of proportionality as laid down in the same Protocol.

Paragraph 4 and 5 to be deleted and paragraph 6 to become paragraph 4 in the following form:

4. The Europe of Democracies shall respect the national identities of its Member States, inherent in their fundamental structures and essential State functions, especially their political and constitutional structure, including the organisation of public administration at national, regional and local level and the national democracy

¹ A new version of the Protocol will be circulated shortly.

AMENDMENT FORM

Suggestion for amendment of Article : 8 §4

By Mr : Joachim Wuermeling and Peter Altmaier

Status : - Alternates

(4) Nach dem Verhältnismäßigkeitsgrundsatz gehen die Maßnahmen der Union inhaltlich wie formal nicht über das für die Erreichung der Ziele der ~~Verfassung~~ *Zuständigkeiten* erforderliche Maß hinaus.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 8 §3

By Mr : Joachim Wuermeling and Peter Altmaier

Status : - Alternates

(3) Nach dem Subsidiaritätsprinzip wird die Union in den Bereichen, die nicht in ihre ausschließliche Zuständigkeit fallen, nur tätig, sofern und soweit die Ziele der in Betracht gezogenen Maßnahmen auf Ebene der Mitgliedstaaten nicht ausreichend erreicht werden können, **und daher** wegen ihres Umfangs oder ihrer Wirkungen ~~aber besser nur~~ auf Unionsebene erreicht werden

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 8 §2

By Mr : Joachim Wuermeling and Peter Altmaier

Status : - Alternates

(2) Nach dem Grundsatz der begrenzten Einzelermächtigungen wird die Union innerhalb der Grenzen der Zuständigkeiten tätig, die ihr ~~von der in dieser~~ Verfassung ~~zur Verwirklichung der in dieser niedergelegten Ziele~~ zugewiesen werden. Alle der Union nicht durch die Verfassung zugewiesenen Zuständigkeiten verbleiben bei den Mitgliedstaaten. ***Für die Anwendung des Rechts der Union sind die Mitgliedstaaten zuständig, soweit diese Verfassung nichts anderes bestimmt.***

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article 8 und 9 :

By Mr Joschka Fischer

Status : - Member

Artikel 8: Grundprinzipien

(1) Für die Abgrenzung und Ausübung der Zuständigkeiten der Union gelten die Grundsätze der begrenzten Einzelermächtigungen, der Subsidiarität, der Verhältnismäßigkeit, des Vorrangs des Unionsrechts und der loyalen Zusammenarbeit.

(2) Nach dem Grundsatz der begrenzten Einzelermächtigung wird die Union innerhalb der Grenzen der Zuständigkeiten tätig, die ihr von der Verfassung zur Verwirklichung der in dieser niedergelegten Ziele zugewiesen werden. Alle der Union nicht durch die Verfassung zugewiesenen Zuständigkeiten verbleiben bei den Mitgliedstaaten.

(3) Nach dem Subsidiaritätsprinzip wird die Union in den Bereichen, die nicht in ihre ausschließliche Zuständigkeit fallen, nur tätig, sofern und soweit die Ziele der in Betracht gezogenen Maßnahmen auf Ebene der Mitgliedstaaten nicht ausreichend erreicht werden können und daher, wegen ihres Umfangs oder ihrer Wirkungen ~~aber~~ besser auf Unionsebene erreicht werden können.

Die Organe wenden das Subsidiaritätsprinzip nach dem Protokoll über die Anwendung der Grundsätze der Subsidiarität und der Verhältnismäßigkeit im Anhang zur Verfassung an.

(4) Nach dem Verhältnismäßigkeitsgrundsatz gehen die Maßnahmen der Union inhaltlich wie formal nicht über das für die Erreichung der Ziele der Verfassung erforderliche Maß hinaus.

Bei der Ausübung der Zuständigkeiten der Union wenden die Organe den Verhältnismäßigkeitsgrundsatz nach dem Protokoll über die Anwendung der Grundsätze der Subsidiarität und der Verhältnismäßigkeit im Anhang zur Verfassung an.

(5) Die Verfassung und das Recht, das von den Organen der Union in Ausübung der ihnen von der Verfassung zugewiesenen Zuständigkeiten gesetzt wird, haben Vorrang vor dem Recht der

Mitgliedstaaten.

(65) Nach dem Grundsatz der loyalen Zusammenarbeit achten die Mitgliedstaaten einander ~~und~~, unterstützen sich gegenseitig bei der Erfüllung der sich aus der Verfassung ergebenden Aufgaben, erleichtern der Union die Erfüllung ihrer Aufgabe und unterlassen alle Maßnahmen, welche die Verwirklichung der Ziele der Verfassung gefährden könnten.

Die Mitgliedstaaten treffen alle geeigneten Maßnahmen allgemeiner oder besonderer Art zur Erfüllung der Verpflichtungen, die sich aus der Verfassung oder aus Handlungen der Organe der Union ergeben.

Die Union verhält sich den Mitgliedstaaten gegenüber loyal.

(7) Die Union achtet die nationale Identität ihrer Mitgliedstaaten, insbesondere ihre politische und verfassungsrechtliche Struktur auf nationaler, regionaler und kommunaler Ebene sowie den nach dem Recht der Mitgliedstaaten verliehenen Status der Religionsgemeinschaften.

(8) Die Erfordernisse des Umweltschutzes müssen bei der Festlegung und Durchführung der Unionspolitiken und –maßnahmen insbesondere zur Förderung einer nachhaltigen Entwicklung einbezogen werden.

Artikel 9: Anwendung der Grundprinzipien

(1) ~~Die Verfassung und das Recht, das von den Organen der Union in Ausübung der ihnen von der Verfassung zugewiesenen Zuständigkeiten gesetzt wird, haben Vorrang vor dem Recht der Mitgliedstaaten.~~

(2) ~~Bei der Ausübung der nicht ausschließlichen Zuständigkeiten der Union wenden die Organe das Subsidiaritätsprinzip nach dem Protokoll über die Anwendung der Grundsätze der Subsidiarität und der Verhältnismäßigkeit im Anhang zur Verfassung an. Das in diesem Protokoll vorgesehene Verfahren gestattet es den nationalen Parlamenten der Mitgliedstaaten, auf die Einhaltung des Subsidiaritätsprinzips zu achten.~~²

(3) ~~Bei der Ausübung der Zuständigkeiten der Union wenden die Organe den Verhältnis-~~

~~mäßigkeitsgrundsatz nach demselben Protokoll an.~~

(4) ~~Die Mitgliedstaaten treffen alle geeigneten Maßnahmen allgemeiner oder besonderer Art zur Erfüllung der Verpflichtungen, die sich aus der Verfassung oder aus Handlungen der Organe der Union ergeben.~~

(5) ~~Nach dem Grundsatz der loyalen Zusammenarbeit erleichtern die Mitgliedstaaten der Union die Erfüllung ihrer Aufgabe und unterlassen alle Maßnahmen, welche die Verwirklichung der Ziele der Verfassung gefährden könnten. Die Union verhält sich den Mitgliedstaaten gegenüber loyal.~~

(6) ~~Die Union achtet die nationale Identität ihrer Mitgliedstaaten, die mit deren grundlegenden Struktur und den wesentlichen Aufgaben eines Staates – insbesondere seiner politischen und verfassungsrechtlichen Struktur einschließlich der Organisation der staatlichen Behörden auf nationaler, regionaler und kommunaler Ebene – zusammenhängt.~~

Explanation (if any) :

Artikel 8 und 9 sollten im Sinne der Lesbarkeit zusammengeführt werden, da die Unterscheidung zwischen Grundprinzipien und Anwendung künstlich und überflüssig erscheint.

zu 8 (3) Die Korrektur übernimmt den Wortlaut aus Art. 5 EGV.

zu 8 (4) Da explizit auf das Subsidiaritätsprotokoll im Anhang der Verfassung verwiesen wird – das die Beteiligung der nationalen Parlamente im Rahmen des Frühwarnmechanismus ausdrücklich regelt – sollten die nationalen Parlamente im Verfassungsartikel nicht gesondert genannt werden.

zu 8 (7) Die Präzisierung des Prinzips der nationalen Identität wird gestrafft und um den Status der Religionsgemeinschaften ergänzt.

zu 8 (8) Die umweltpolitische Querschnittsklausel (Art. 6 EGV) gilt seit Amsterdam als zusätzliches Grundprinzip der Kompetenzausübung und wird im EG-Vertrag unmittelbar nach dem Subsidiaritätsprinzip aufgeführt.

² Eine Neufassung des Protokolls wird in Kürze verteilt.

AMENDMENT FORM

Suggestion for amendment of Article: 8

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 8: Fundamental principles

1. The limits and use of competences in the Europe of Democracies are governed by the principles of conferral, subsidiarity, proportionality and loyal cooperation.
2. In accordance with the principle of conferral, the Europe of Democracies shall act within the limits of the competences conferred upon it by the Treaty to attain the objectives the Treaty sets out. Competences not conferred upon the Europe of Democracies by the Treaty remain with the Member States.
3. In accordance with the principle of subsidiarity, the Europe of Democracies 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 the level of the Europe of Democracies.
4. In accordance with the principle of proportionality, the scope and form of action undertaken by the Europe of Democracies shall not exceed what is necessary to achieve the objectives of the Treaty.
5. In accordance with the principle of loyal cooperation, the Europe of Democracies and the Member States shall, in full mutual respect, assist each other to carry out tasks which flow from the Treaty.

AMENDMENT FORM

Suggestion for amendment of Article 9:

By Elmar BROK, Jozsef SZAJER, Erwin TEUFEL, Jan Jacob VAN DIJK, René VAN DER LINDEN, Frantisek KROUPA, Teresa ALMEIDA GARRETT, Peter ALTMAIER, Jan FIGEL, Piia Noora KAUPPI, 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 9: Application of fundamental principles

1. The Constitution, and law adopted by the Union Institutions in exercising competences conferred on it by the Constitution, shall have primacy over the law of the Member States.
2. In exercising the Union's non-exclusive competences, the Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Constitution. The procedure set out in the Protocol shall enable national parliaments to ensure compliance with the principle of subsidiarity.
3. In exercising the Union's competences, the Institutions shall apply the principle of proportionality as laid down in the same Protocol.
4. 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.

Article 9: Application of fundamental principles

- [1. *Union law prevails over national law.* ~~The Constitution, and law adopted by the Union Institutions in exercising competences conferred on it by the Constitution, shall have primacy over the law of the Member States.~~]

– SEE THE NEW ARTICLE 4a (AS SUGGESTED ON BEHALF OF THE EPP CONVENTION GROUP)

2. In exercising the Union's non-exclusive competences, the *Union* Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Constitution. The *political early-warning* procedure set out in the Protocol shall enable national parliaments to ensure compliance with the principle of subsidiarity.
3. In exercising the Union's competences, the *Union* Institutions shall apply the principle of proportionality as laid down in the same Proto-

col.

5. 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.
6. The Union shall respect the national identities of its Member States, inherent in their fundamental structures and essential State functions, especially their political and constitutional structure, including the organisation of public administration at national, regional and local level.
- [4. 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.]
- **SEE THE NEW ARTICLE 4b (AS SUGGESTED ON BEHALF OF THE EPP CONVENTION GROUP)**
- [5. 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.]
- **SEE THE NEW ARTICLE 4a (AS SUGGESTED ON BEHALF OF THE EPP CONVENTION GROUP)**
- [6. The Union shall respect the national identities of its Member States, ~~inherent in their fundamental structures and essential State functions, especially~~ their political and constitutional structure, including ~~the organisation of public administration at national, regional and local level~~ *self-government, their choices regarding language, and the legal status of churches, religious societies and non-confessional organisations.*]
- **SEE ARTICLE 1 PARAGRAPH 3 (AS SUGGESTED ON BEHALF OF THE EPP CONVENTION GROUP)**

Explanation:

Para 1:

- 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” (see our proposal for a new Article 4a), and not only in Title III on Union competences, as it is currently proposed by the text of the Praesidium in Article 9(1). 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 of the principle, see also Article 62 in the EPP Discussion Paper (Frascati version, as amended, 27 January 2003).

Para 2:

- The constitutional text itself should determine the main characteristics of the new control procedure at the disposal of national parliaments, namely that it is (1) a political mechanism and (2) an early-warning mechanism. Only the details should be set out in the Protocol.

Paras 4 and 5:

- For the reasons which also apply to the principle of supremacy, the important principle of Union loyalty should be set out already in the previous Title of the Constitution as it goes beyond a principle which merely applies in the context of the exercise of Union competences. We therefore propose a new Article 4b on Union loyalty (for a more detailed explanation, see our amendment proposing a new Article 4b). As an illustration for an alternative positioning of the principle, see also Article 63 in the EPP Discussion Paper (Frascati version, as amended, 27 January 2003).

Para 6:

- The wording should be amended to reflect properly the outcome of Convention Working Group V “Complementary Competencies.
- In addition, the entire provision should be positioned already in the previous Title of the Constitution; see our amendment on Article 1(2) of the Praesidium text.

AMENDMENT FORM

Suggestion for amendment of Article 8:

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

on behalf of the EPP Convention Group

Status: Members and Alternates

Text of the Praesidium

Proposed Amendments

Article 8: Fundamental principles

1. The limits and use of Union competences are governed by the principles of conferral, subsidiarity, proportionality and loyal cooperation.
2. In accordance with the principle of conferral, 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.
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 proportion-

Article 8: Fundamental principles

1. The limits and use of Union competences are governed by the principles of conferral, subsidiarity, proportionality and loyal cooperation.
2. In accordance with the principle of conferral, 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.
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~~ **more efficiently** achieved at Union level.
4. In accordance with the principle of proportion-

ality, the scope and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution.

5. 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.

ality, the scope and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution.

5. 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.

Explanation:

Para 3:

- ***“More efficiently”** is proposed instead of “better” in order to make the principle clearer and more justifiable. See also Article 67(3) of the EPP Discussion Paper (Frascati text, as amended, 27 January 2003).*

FICHE AMENDEMENT

Proposition d'amendement à l'Article 8:

Déposée par M. Olivier DUHAMEL
M. Luis MARINHO
Mme Anne VAN LANCKER
M. Klaus HÄNSCH M.
M. Caspar EINEM

Qualité: - Membres

Mme Pervenche BERÈS
Mme Maria BERGER
M. Carlos CARNERO
Mme Elena PACIOTTI
Mme Helle THORNING-SCHMIDT

Qualité: - Suppléants

Article 8: Principes fondamentaux

1. La délimitation et l'exercice de compétences de l'Union sont régis par les principes d'attribution, de subsidiarité, de proportionnalité et de coopération loyale.
2. Selon le principe d'attribution, l'Union agit dans les limites des compétences qui lui sont attribuées par la Constitution en vue d'atteindre les objectifs qu'elle établit. Toute compétence non attribuée à l'Union par la Constitution appartient aux Etats membres.
3. Selon le principe de subsidiarité, dans les domaines qui ne relèvent pas de sa compétence exclusive, l'Union intervient (**2 mots supprimés**) dans la mesure où les objectifs de l'action envisagée ne peuvent pas être atteints de manière suffisante par les Etats membres, mais peuvent, en raison des dimensions ou des effets de l'action envisagée, être mieux obtenus au niveau de l'Union.
4. Selon le principe de proportionnalité, le contenu et la forme de l'action de l'Union n'excèdent pas ce qui est nécessaire pour atteindre les objectifs de la Constitution.
5. Selon le principe de coopération loyale, l'Union et les Etats membres se respectent et s'assistent mutuellement dans l'accomplissement des missions découlant de la Constitution.

Explication éventuelle:

AMENDMENT FORM

Suggestion for amendment of Article : **9: Application of fundamental principles**

By the Earl of Stockton MEP

Status : - Member - Alternate

4. 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 (New) ; and ensure no additional administrative burdens are imposed by Member State governments.

5. In accordance with the principle of loyal cooperation, Member States shall facilitate the achievement of the Union's tasks (New) The remainder of the sentence to be deleted. The Union shall act loyally towards the Member States.

AMENDMENT FORM

Suggestion for amendment of Article 9

By Mr : Jan KOHOUT

Status : - Member

Art. 8.5, Art. 9.4 and 9.5:

In comparison with the existing Article 10 of the EC Treaty, the principle of loyalty is more narrow in scope. Since it does not concern only competences, it should be relocated to Title I.

Art. 9.1.

The principle of primacy is covered by the next Title. If the reference is to remain here, it should be accompanied by provisions describing other effects of Community law in Member States.

Art. 9.2 and 9.3:

The references to the Protocol on the application of the principles of subsidiarity and proportionality should be put together in a single clause.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 9

By MM : Kiljunen and Vanhanen

Status : - Members

-
1. 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 proportionality annexed to the Constitution. The procedure set out in the Protocol shall enable national parliaments to ensure compliance with the principle of subsidiarity.
2. – 4. [deleted]
5. Member States shall refrain from any measure which could jeopardise the attainment of the objectives of the measures adopted in accordance with the Constitution. The Union shall act loyally towards the Member States.
6. [deleted]
-

Explanation (if any) :

*Article 9, paragraph 6, should be removed to Article 1, paragraph 2, and
complemented as
proposed*

AMENDMENT FORM

Suggestion for amendment of Article 9 para 1

By Ms Maria Berger

Status: - Member x Alternate

1. The Constitution shall have primacy over all Union law including accession treaties. The Constitution, and law adopted by the Union Institutions in exercising competences conferred on it by the Consitution, shall have primacy over the law of the Member States.

Explanation (if any):

AMENDMENT FORM

Suggestion for amendment of Article : 9

By Mr :Michalis Attalides

Status : - Member

In paragraph 1,

... shall enable national parliaments to ~~ensure compliance~~ **convey early in the legislative process**
their views on the compliance of a legislative proposal with the principle of subsidiarity.

Explanation (if any) :

The proposed new formulation more closely corresponds to the conclusions of Working Group 1 on the Principle of Subsidiarity.

AMENDMENT FORM

Suggestion for amendment of Article : **8: Fundamental principles**

By the Earl of Stockton MEP

Status : - Member - Alternate

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, (New) or popular support, of the proposed action be better achieved at the Union level.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 8

By MM : Kiljunen and Vanhanen

Status : - Members

1. The limits and use of Union competences are governed by the principles of conferral, subsidiarity and proportionality ~~[delete]~~.
 2. In accordance with the principle of conferral, 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.

[new para] 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. [As Presidency draft]
 4. [As Presidency draft]
 5. [Delete]
-

Explanation (if any) :

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. They should rather be placed in Title I.

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.

Mentioning the principle of loyal cooperation (as set out in the presidency article 8.5.) does not seem necessary here, therefore deleted.

AMENDMENT FORM

Suggestion for amendment of Article : 9

By Mr Ivan Korcok, Mr Juraj Migas, Ms Irena Belohorska, Ms Zuzana Martinakova

Status : Mr Korcok and Ms Belohorska are members. Mr Migas and Ms Martinakova who are alternates.

-
6. The Union shall respect the national identities and territorial integrity of its Member States, inherent in their fundamental structures and essential State functions, especially their political and constitutional structure, including the organisation of public administration at national, regional and local level.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 9

By Mr Korcok, Mr Jan Figel, Mr Juraj Migas, Ms Zuzana Martinakova

Status : Mr Korcok and Mr Figel are members. Mr Migas and Ms Martinakova are alternates.

2. In exercising the Union's non-exclusive competences, ~~the Institutions~~ the Union's Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Constitution. The procedure set out in the Protocol shall enable national parliaments to ensure compliance with the principle of subsidiarity.

Explanation (if any) :

Amendments submitted by Teija Tiilikainen and Antti Peltomäki 17 February 2003

[Article 9: Application of fundamental principles (deleted)]

- 1. [see our draft Article 4bis above].**
- 2. [see our draft Article 8 paras. 3 and 6]**
- 3. [see our draft Article 8 paras. 4 and 6]**
- 4. [see our draft Article 4ter]**
- 5. [see our draft Article 4ter]**
- 6. [see our draft Article 1 para. 2]]**

Commentary:

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

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.

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

AMENDMENT FORM

Suggestion for amendment of Article 9

By Mr. Ivan Korčok (SK)

Status : - Member

Article 9: Application of fundamental principles

1. ~~The Constitution, and law adopted by the Union Institutions in exercising competences conferred on it by the Constitution,~~ The law of the Union shall have primacy over the law of the Member States.
2. In exercising the Union's non-exclusive competences, the Institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the ~~Constitution~~ Constitutional Treaty. The procedure set out in the Protocol shall enable national parliaments to ensure compliance with the principle of subsidiarity.
3. In exercising the Union's competences, the Institutions shall apply the principle of proportionality as laid down in the same Protocol.
4. Member States shall take all appropriate measures, general or particular, to ensure fulfilment of the obligations flowing from the ~~Constitution~~ Constitutional Treaty or resulting from actions taken by the Union Institutions.
5. 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~~ Constitutional Treaty. The Union shall act loyally towards the Member States.
6. The Union shall respect the national identities and territorial integrity of its Member States, inherent in their fundamental structures and essential State functions, especially their political and constitutional structure, including the organisation of public administration at national, regional and local level.

Explanation (if any) :

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.

AMENDMENT FORM

Suggestion for amendment of Article 8

By Mr. Ivan Korčok (SK)

Status : - Member

Article 8: Fundamental principles

1. The limits and use of Union competences are governed by the principles of loyal cooperation, conferral, subsidiarity and proportionality ~~and loyal cooperation~~.
2. In accordance with the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the ~~Constitution~~ Constitutional Treaty to attain the objectives the ~~Constitution~~ Constitutional Treaty sets out. Competences not conferred upon the Union by the Constitution remain with the Member States.
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~~ more effectively 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~~ Constitutional Treaty.
5. 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~~ Constitutional Treaty.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article :8

By Mr Korcok, Mr Jan Figel, Mr Juraj Migas, Ms Zuzana Martinakova

Status : Mr Korcok and Mr Figel are members. Mr Migas and Ms Martinakova are alternates.

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~~ more effectively achieved at Union level.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article: 9.6

By: Ms Linda McAvan

Status: - Member -Alternate

The Union shall respect the national identities of its Member States **and their cultural, linguistic and territorial diversity**, inherent in their fundamental structures and essential State functions, especially their political and constitutional structure, including the organisation of public administration at national, regional, and local level.

AMENDMENT FORM

Suggestion for amendment of Article : 9.2

By: Ms Linda McAvan

Status : - Member - Alternate

Change in last sentence only:

The procedure set out in the Protocol shall enable national parliaments **and the Committee of the Regions** to ensure compliance with the principle of subsidiarity.

***Explanation:** Extends early warning right to CoR as debated in the Convention on Feb 7th and in keeping with proposals in the Napoletano report adopted by the European Parliament.*

AMENDMENT FORM

Suggestion for amendment of Article 9

By Prof Peter Serracino-Inglott - Member

Mr John Inguanez - Alternate

To be reworded as follows :

1. The Constitution and laws adopted by the Union Institutions in exercising competences conferred on them by the Constitution, shall have primacy over the law of the Member States.
 2. In exercising the Union's non-exclusive competences, the Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Constitution. The procedure set out in the Protocol shall enable national parliaments to ensure compliance with the principle of subsidiarity. ¹
 3. 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.
 4. In accordance with the principle of solidarity, 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.
 5. The Union shall respect the national identities of its Member States, in particular the fundamental structures and essential functions of a State, with special regard to:
 - political and constitutional structure, including regional and local government;
 - national citizenship;
 - territory;
 - the legal status of churches and religious societies;
 - national defence and the organisation of armed forces;
 - choice of languages.
-

Explanation (if any) :

Article 9(3) to be deleted as this is a repetition of Article 8(4).

Article 9(6) to be reworded to ensure consistency with the recommendation in the report by the Working Group on Complementary Competences.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 9

Déposée par Madame ou Monsieur : Mme PALACIO

Qualité : - Membre - Suppléant

Article 9: Application des principes fondamentaux

1. ~~[La Constitution et le droit adopté par les Institutions de l'Union dans l'exercice des compétences qui lui sont attribuées par celle-ci ont la primauté sur le droit des Etats membres].~~
 2. Dans l'exercice des compétences non exclusives de l'Union, les Institutions appliquent le principe de subsidiarité conformément au Protocole sur l'application des principes de subsidiarité et de proportionnalité annexé à la Constitution. La procédure prévue dans ce Protocole permet aux Parlements nationaux des Etats membres de veiller au respect du principe de subsidiarité.
 3. Dans l'exercice des compétences de l'Union, les Institutions appliquent le principe de proportionnalité conformément à ce même Protocole.
 4. Les Etats membres prennent toutes mesures générales ou particulières propres à assurer l'exécution des obligations découlant de la Constitution ou résultant des actes des Institutions de l'Union.
 5. Conformément au principe de coopération loyale, les Etats membres facilitent à l'Union l'accomplissement de sa mission et s'abstiennent de toutes mesures susceptibles de mettre en péril la réalisation des buts de la Constitution. L'Union agit avec loyauté vis-à-vis des Etats Membres.
 6. L'Union respecte l'identité nationale de ses Etats membres liée à leur structure fondamentale ~~[et aux fonctions essentielles d'un Etat, et notamment sa structure]~~ politique et constitutionnelle, y compris l'organisation des pouvoirs publics au niveau national, régional et local.
-

Explication :

Le paragraphe premier serait transféré à l'article 8 (nouveau paragraphe 3).

La référence aux fonctions essentielles de l'État est confuse. Ces fonctions essentielles ne sont nullement définies. Cette rédaction pourrait soulever des doutes en relation avec certaines compétences exercées par les Institutions de l'Union (politique monétaire, politique extérieure, etc.).

AMENDMENT FORM

Suggestion for amendment of Article : 9

By Mr : Gianfranco FINI

Status : - Member

Articolo 9: Applicazione dei principi fondamentali

1. La Costituzione e il diritto adottato dalle istituzioni dell'Unione nell'esercizio delle competenze che le sono attribuite dalla Costituzione stessa hanno prevalenza sul diritto degli Stati membri.
2. Nell'esercizio delle competenze non esclusive dell'Unione, le istituzioni applicano il principio della sussidiarietà conformemente al Protocollo sull'applicazione dei principi di sussidiarietà e di proporzionalità allegato alla Costituzione. La procedura prevista in detto protocollo consente ai parlamenti nazionali degli Stati membri di provvedere al rispetto del principio di sussidiarietà. ¹
3. Nell'esercizio delle competenze dell'Unione, le istituzioni applicano il principio della proporzionalità conformemente al medesimo protocollo.
4. Gli Stati membri adottano tutte le misure di carattere generale e particolare atte ad assicurare l'esecuzione degli obblighi derivanti dalla Costituzione determinati dagli atti delle istituzioni dell'Unione.
5. Conformemente al principio della cooperazione leale, gli Stati membri agevolano l'Unione nell'adempimento dei suoi compiti e si astengono da qualsiasi misura che rischi di compromettere la realizzazione degli scopi della Costituzione. L'Unione agisce lealmente nei confronti degli Stati membri.
6. L'Unione rispetta l'identità nazionale dei suoi Stati membri, ***la loro struttura fondamentale, le loro funzioni essenziali ed in particolare la loro organizzazione politica e costituzionale, compresa la ripartizione*** ~~quella legata~~

~~alla loro struttura fondamentale e alle funzioni essenziali di uno Stato, segnatamente la sua struttura politica e costituzionale, compresa l'organizzazione dei poteri pubblici a livello nazionale, regionale e locale.~~

Explanation (if any) :

¹ Una nuova versione del Protocollo sarà diffusa prossimamente.

FICHE AMENDEMENT

Proposition d'amendement à l'Article 9:

Déposée par : M. Caspar EINEM

Qualité : - Membre

Folgender neuer Absatz soll hinzugefügt werden:

- (7) Die Europäische Union achtet den Status, den Kirchen und religiöse Vereinigungen oder Gemeinschaften in den Mitgliedstaaten nach deren Rechtsvorschriften genießen, und beeinträchtigt ihn nicht.
Die Europäische Union achtet den Status von weltanschaulichen Gemeinschaften in gleicher Weise.**
-

Explication éventuelle :

Die Übernahme der Erklärung Nr. 11 zum Vertrag von Amsterdam entspricht dem Auftrag von Laeken, den Verfassungsrechtsbestand zu konsolidieren und der geltenden Rechtslage. Die Union hat kein Recht, in die Verfassung der Kirchen, Glaubens- und weltanschaulichen Gemeinschaften einzugreifen und beansprucht es nicht. Die Kirchen wiederum haben ein hohes Interesse, diesen Artikel in die Verfassung übernommen zu sehen. Artikel 10 der Grundrechtscharta sichert zwar das individuelle Glaubens- und Religionsrecht, nicht aber die institutionelle Seite. Eine Übernahme der Bestimmung erscheint daher vertretbar.

AMENDMENT FORM

Suggestion for amendment of Article 8

By Prof Peter Serracino-Inglott - Member

Mr John Inguanez - Alternate

To be reworded as follows :

1. The limits and use of Union competences are governed by the principles of conferral, subsidiarity, proportionality and solidarity.
 2. In accordance with the principle of conferral, 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.
 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. In accordance with the principle of solidarity, the Union and the Member States shall, in full mutual respect, assist each other to carry out tasks which flow from the Constitution, especially where the implementation of a Union measure is deemed by a Member State to produce disproportionate hardship.
-

Explanation (if any) :

It would be preferable to refer to the universally accepted principle of solidarity.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 8

Déposée par Madame ou Monsieur : Mme PALACIO

Qualité : - Membre - Suppléant

Article 8: Principes fondamentaux

1. La délimitation et l'exercice de compétences de l'Union sont régis par les principes d'attribution, de primauté, de subsidiarité, de proportionnalité et de coopération loyale.
2. Selon le principe d'attribution, l'Union agit dans les limites des compétences qui lui sont attribuées par la Constitution en vue d'atteindre les objectifs qu'elle établit. Toute compétence non attribuée à l'Union par la Constitution appartient aux Etats , membres.
3. La Constitution et le droit adopté par les Institutions de l'Union dans l'exercice des compétences qui lui sont attribuées par celle-ci ont la primauté sur le droit des Etats membres.
4. Selon le principe de subsidiarité, dans les domaines qui ne relèvent pas de sa compétence exclusive, l'Union intervient seulement et dans la mesure où les objectifs de l'action envisagée ne peuvent pas être atteints de manière suffisante par les Etats membres, mais peuvent, en raison des dimensions ou des effets de l'action envisagée, être mieux obtenus au niveau de l'Union.
5. Selon le principe de proportionnalité, le contenu et la forme de l'action de l'Union n'excèdent pas ce qui est nécessaire pour atteindre les objectifs de la Constitution.
6. Selon le principe de coopération loyale, l'Union et les Etats membres se respectent et s'assistent mutuellement dans l'accomplissement des missions découlant de la Constitution.

Explication :

Le principe de primauté est bien un principe fondamental et il faudrait le mentionner dans cet article et pas dans l'article 9, qui parle de l'application des principes fondamentaux.

AMENDMENT FORM

Suggestion for amendment of Article : 8

By Mr : Gianfranco FINI

Status : - Member

Articolo 8: Principi fondamentali

1. La delimitazione e l'esercizio delle competenze dell'Unione si fondano sui principi di attribuzione, sussidiarietà , proporzionalità, [e] cooperazione leale
 2. Secondo il principio di attribuzione, l'Unione agisce nei limiti delle competenze che le sono conferite dalla Costituzione al fine di realizzare gli obiettivi da essa stabiliti. Qualsiasi competenza non attribuita all'Unione dalla Costituzione appartiene agli Stati membri.
 3. Secondo il principio della sussidiarietà, nei settori **di esercizio delle competenze condivise** ~~[che non sono di sua esclusiva competenza]~~ l'Unione interviene soltanto se e nella misura in cui gli obiettivi dell'azione prevista non possono essere sufficientemente realizzati dagli Stati membri ~~[ma possono, a motivo della portata o degli effetti dell'azione in questione, essere realizzati meglio a livello di Unione]~~.
 4. Secondo il principio della proporzionalità, il contenuto e la forma dell'azione dell'Unione non vanno al di là di quanto sia necessario per il raggiungimento degli obiettivi della Costituzione.
 5. Secondo il principio della cooperazione leale, l'Unione e gli Stati membri si rispettano e si assistono reciprocamente nell'adempimento dei compiti derivanti dalla Costituzione.
 6. ***Ogni intervento dell'Unione tiene conto delle diverse dimensioni, articolazioni e condizioni degli Stati membri.***
-

Explanation (if any) :

FICHE AMENDEMENT

Proposition d'amendement à l'Article 8:

Déposée par : M. Caspar EINEM

Qualité : - Membre

- (5) Nach dem Grundsatz der loyalen Zusammenarbeit achten die Mitgliedstaaten einander **und die Union** und unterstützen sich gegenseitig **und die Union** bei der Erfüllung der sich aus der Verfassung ergebenden Aufgaben.
-

Explication éventuelle :

Gerade die jüngsten Erfahrungen zeigen, dass beides notwendig und wünschenswert ist. Im übrigen ist auch Art. 11 EUV bereits in dieser Richtung orientiert

AMENDMENT FORM (COMMENT for Article 9§2)

By Mr: Paraskevas AVGERINOS

Status: Member

Explanation:

Δεν δέχομαι τη διαδικασία της «έγκαιρης προειδοποίησης» (*alerte précoce*) στον ex-ante έλεγχο από τα εθνικά κοινοβούλια, όπως είχα αναφέρει στην ομιλία μου κατά τη συζήτηση της αρχής της επικουρικότητας. Θεωρώ ότι θα έχει αρνητικές συνέπειες στην αποτελεσματικότητα, θα προκαλέσει σύγχυση και στρέβλωση στο θεσμικό σύστημα κι αφήνει ανοιχτό το θέμα της επανεθνικοποίησης των πολιτικών.

AMENDMENT FORM

Suggestion for amendment of Article : 9

By Mr Kirkhope MEP

Status : Member

1. The simplifying Treaty, and law adopted by the Community Institutions in exercising competences conferred on it by the simplifying Treaty, **should be considered law in a Member State once the national parliament concerned has approved that law.**
2. In exercising the Community's non-exclusive competences, the Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the simplifying Treaty. The procedure set out in the Protocol shall enable national parliaments to ensure compliance with the principle of subsidiarity.
3. In exercising the Community's competences, the Institutions shall apply the principle of proportionality as laid down in the same Protocol.
4. Member States should take all appropriate measures, general or particular, to ensure fulfilment of the obligations flowing from the simplifying Treaty or resulting from actions taken by the Community Institutions, **under the scrutiny of joint committees of national MPs and MEPs.**
5. In accordance with the principle of cooperation, Member States should facilitate the achievement of the Community's tasks.
6. The Community shall respect the national identities of its Member States, inherent in their fundamental structures and essential State functions, especially their political and constitutional structure, including the organisation of public administration at national, regional and local level.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : Article 8, para 3

By Mr : MacCormick, Neil

Status : - Alternate

Article 8 para 2, add nineteen words

'...the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the member States *or by their regional and local authorities on the basis of the powers conferred on them under national law*, but can rather by reason of the scale or effects of the proposed action, be better achieved at Union level.'

Explanation (if any) :

This follows the proposal of the European Parliament in the Napolitano Report concerning subsidiarity. To insert these words would also confirm the consensus of the Convention during its debate on 7 February.

AMENDMENT FORM

Suggestion for amendment of Article: 8§2

By Mr: Paraskevas AVGERINOS

Status: Member

Σύμφωνα με την αρχή της απονομής των αρμοδιοτήτων, η Ένωση ασκεί τη δράση της εντός των αρμοδιοτήτων που της απονέμει το Σύνταγμα για την επίτευξη των στόχων τους οποίους ορίζει. **Κάθε αρμοδιότητα η οποία δεν απονέμεται στην Ένωση δυνάμει του Συντάγματος ανήκει στα κράτη μέλη.**

Σύμφωνα με την αρχή της απονομής των αρμοδιοτήτων, η Ένωση ασκεί τη δράση της εντός των αρμοδιοτήτων που της απονέμει το Σύνταγμα για την επίτευξη των στόχων τους οποίους ορίζει.

Explanation:

Διαγράφεται η τελευταία πρόταση της παραγράφου διότι είναι αυτονόητο πως όποια αρμοδιότητα δεν απονέμεται στην Ένωση δυνάμει του Συντάγματος ανήκει στα κράτη μέλη.

AMENDMENT FORM

Suggestion for amendment of Article: 8§1

By Mr: Paraskevas AVGERINOS

Status: Member

Η οριοθέτηση και η άσκηση των αρμοδιοτήτων της Ένωσης διέπονται από τις αρχές της απονομής των αρμοδιοτήτων, της επικουρικότητας, της αναλογικότητας και της καλόπιστης συνεργασίας.

Η οριοθέτηση και η άσκηση των αρμοδιοτήτων της Ένωσης διέπονται από τις αρχές της απονομής των αρμοδιοτήτων, της επικουρικότητας, της αναλογικότητας, **της αλληλεγγύης** και της καλόπιστης συνεργασίας.

Explanation:

AMENDMENT FORM

Suggestion for amendment of Article : 8

By Ms / Mr : Johannes Voggenhuber, Eva Lichtenberger

Status : - Member - Alternate

TITLE III: The Union's competences

Article 8: Fundamental principles

1. The limits and use of Union competences are governed by the principles of conferral, subsidiarity, proportionality, **cohérence, integration** and loyal cooperation.
 2. In accordance with the principle of conferral, 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.
 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.
Member States shall be allowed to take further, non-discriminatory measures for the conservation and protection of the environment provided they are consistent with the objectives of the Constitution.
 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.
- 4 bis. Selon le principe e cohérence, dans la définition et la mise en oeuvre de ses politiques et actions, l'Union veille à ce qu'elles soient compatibles entre elles et prennent en considération l'ensemble des objectives de l'Union.**
- 4 third. In accordance with the principle of integration, environmental protection requirements must be integrated into the definition and implementation of the Unions**

policies and activities referred to in Part 3, in particular with a view to promoting sustainable development.

5. 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.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 8

By Ms / Mr : Neil Mac Cormick

Status : - Member - Alternate

TITLE III: The Union's competences

Article 8: Fundamental principles

1. The limits and use of Union competences are governed by the principles of conferral, subsidiarity, proportionality, **cohérence, integration** and loyal cooperation.
 2. In accordance with the principle of conferral, 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.
 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.
Member States shall be allowed to take further, non-discriminatory measures for the conservation and protection of the environment provided they are consistent with the objectives of the Constitution.
 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.
- 4 bis. Selon le principe e cohérence, dans la définition et la mise en oeuvre de ses politiques et actions, l'Union veille à ce qu'elles soient compatibles entre elles et prennent en considération l'ensemble des objectives de l'Union.**
- 4 third. In accordance with the principle of integration, environmental protection requirements must be integrated into the definition and implementation of the Unions**

policies and activities referred to in Part 3, in particular with a view to promoting sustainable development.

5. 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.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article : 8

By Mr Kirkhope MEP

Status : Member

1. The limits and use of Community competences are governed by the principles of conferral, subsidiarity, proportionality and cooperation.
2. In accordance with the principle of conferral, the Community shall act within the limits of the competences conferred upon it by the simplifying Treaty to attain the objectives the simplifying Treaty sets out. Competences not conferred upon the Community by the simplifying Treaty remain with the Member States.
3. In accordance with the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Community shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, acting alone or with each other, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Community level by unanimous agreement in each case.
4. In accordance with the principle of proportionality, the scope and form of Community action shall not exceed what is necessary to achieve the objectives of the simplifying Treaty as specified for each competence.
5. In accordance with the principle of cooperation, the Community and the Member States should, in full mutual respect, assist each other to carry out tasks which flow from the simplifying Treaty.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article: 8§(new paragraph between 8§4 and 8§5)

By Mr: Paraskevas AVGERINOS

Status: Member

Σύμφωνα με την αρχή της αλληλεγγύης
η δράση της Ένωσης συμβάλλει στην
ενίσχυση της οικονομικής και
κοινωνικής συνοχής.

Explanation:

Η αλληλεγγύη είναι σημαντικό στοιχείο για τον ευρωπαίο πολίτη, διότι του δίνει το αίσθημα ότι η Ένωση δεν είναι απλά ένας οικονομικός χώρος, αλλά μια κοινή ευρωπαϊκή οικογένεια.

AMENDMENT FORM

Suggestion for amendment of Article 9:

By Mr. Jozsef Szajer

Status: Member, National Parliament, Hungary

New 9/7:

7. The European Union respects the specific identity and the contribution to public life of churches and religious communities and maintains a structured dialogue with them without prejudice to their status under national law in the Member States.

Explanation

It is important to refer to the role of churches and religious communities in the EU among the fundamental principles, reflecting the respect of the EU towards their activities.

AMENDMENT FORM

Suggestion for amendment of Article : Article 9

By Mr : Esko Seppänen

Status : Alternate

Artikla 9:

Unionilla on toimivaltaa vain niillä aloilla, joilla sitä on sille tämän perussopimuksen mukaan erikseen annettu, eivätkä perussopimuksen määräykset voi olla ristiriidassa jäsenmaan kansallisen perustuslain tai oikeuskäytännön kanssa.

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article 9

By **Michael Frendo - Member**

To be reworded as follows :

1. The Constitution and laws adopted by the Union Institutions in exercising competences conferred on them by the Constitution, shall have primacy over the law of the Member States.
 2. In exercising the Union's non-exclusive competences, the Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Constitution. The procedure set out in the Protocol shall enable national parliaments to ensure compliance with the principle of subsidiarity.¹
 3. 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.
 4. In accordance with the principle of solidarity, 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.
 5. The Union shall respect the national identities of its Member States, in particular the fundamental structures and essential functions of a State, with special regard to:
 - political and constitutional structure, including regional and local government;
 - national citizenship;
 - territory;
 - the legal status of churches and religious societies;
 - national defence and the organisation of armed forces;
 - choice of languages.
-

Explanation (if any) :

Article 9(3) to be deleted as this is a repetition of Article 8(4).

Article 9(6) to be reworded to ensure consistency with the recommendation in the report by the Working Group on Complementary Competences.

AMENDMENT FORM

Suggestion for amendment of Article : 9

By Ms / Mr :

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

Status : - Member - Alternate

Paragraph 6 shall be exchanged with the text:

The Union shall respect the national identities of its Member States, their political and constitutional structure, including, regional and local *self-government, their choices regarding language, and the legal status of churches and religious societies.*]

Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article 9

By **Dolores Cristina**

Alternate

To be reworded as follows :

1. The Constitution and laws adopted by the Union Institutions in exercising competences conferred on them by the Constitution, shall have primacy over the law of the Member States.
 2. In exercising the Union's non-exclusive competences, the Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Constitution. The procedure set out in the Protocol shall enable national parliaments to ensure compliance with the principle of subsidiarity. ¹
 3. 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.
 4. In accordance with the principle of solidarity, 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.
 5. The Union shall respect the national identities of its Member States, in particular the fundamental structures and essential functions of a State, with special regard to:
 - political and constitutional structure, including regional and local government;
 - national citizenship;
 - territory;
 - the legal status of churches and religious societies;
 - national defence and the organisation of armed forces;
 - choice of languages.
-

Explanation (if any) :

Article 9(3) to be deleted as this is a repetition of Article 8(4).

Article 9(6) to be reworded to ensure consistency with the recommendation in the report by the Working Group on Complementary Competences.

AMENDMENT FORM

Suggestion for amendment of Article : 8

By Mr : Georgios Katiforis

Status : - Member

Article 8: Fundamental principles

1. The limits and use of Union competences are governed by the principles of conferral, subsidiarity, proportionality, **solidarity** and loyal cooperation.
2. In accordance with the principle of conferral, 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.~~
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. In accordance with the principle of solidarity, the Union action shall promote its economic and social cohesion.**
- ~~5.~~ **6.** 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.

AMENDMENT FORM

Suggestion for amendment of Article 8

By Michael Frendo - Member

To be reworded as follows :

1. The limits and use of Union competences are governed by the principles of conferral, subsidiarity, proportionality and solidarity.
2. In accordance with the principle of conferral, 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.
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. In accordance with the principle of solidarity, the Union and the Member States shall, in full mutual respect, assist each other to carry out tasks which flow from the Constitution, especially where the implementation of a Union measure is deemed by a Member State to produce disproportionate hardship.

Explanation (if any) :

It would be preferable to refer to the universally accepted principle of solidarity. The principle of solidarity should also be practised, in the general interests of the Union and its Member States, when the implementation of a Union measure produces disproportionate hardship to a Member State. This would assist cohesion as the Union moves forward in the process of integration.

AMENDMENT FORM

Suggestion for amendment of Article : Article 8, paragraph 3

By Mr : CUSHNAHAN

Status : - Alternate (European Parliament Delegation)

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 *or by their regional and local authorities on the basis of the powers conferred on them under national law*, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

Explanation (if any) :

This follows the proposals related to subsidiarity contained in the Napolitano Report of the European Parliament. Their inclusion would also confirm the consensus of the Convention during its plenary session on 7 February 2003.

AMENDMENT FORM

Suggestion for amendment of Article 8

By **Dolores Cristina**

Alternate

To be reworded as follows :

1. The limits and use of Union competences are governed by the principles of conferral, subsidiarity, proportionality and solidarity.
 2. In accordance with the principle of conferral, 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.
 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. In accordance with the principle of solidarity, the Union and the Member States shall, in full mutual respect, assist each other to carry out tasks which flow from the Constitution, especially where the implementation of a Union measure is deemed by a Member State to produce disproportionate hardship.
-

Explanation (if any) :

It would be preferable to refer to the universally accepted principle of solidarity.

AMENDMENT FORM

Structural and terminological suggestion for amendment of Articles 1/1, 1/2, 6 and 9/6:

By Mr. Jozsef Szajer

Status: Member, National Parliament, Hungary

Article 1: Establishment of the Union

1. Reflecting the will of the ~~[peoples]~~ **citizens, nations** and the States of Europe to build a common future, this Constitution establishes a Union [entitled ...], within which the policies of the Member States shall be administer certain common competences on a federal basis.
2. The Union shall respect the ~~[national]~~ identities of its Member States **and of its nations**.

Article 6: Non-discrimination on grounds of citizenship and nationality

In the field of application of this Constitution and without prejudice to any of its specific provisions, any discrimination on grounds **of citizenship and** of nationality shall be prohibited.

Article 9:

6. The Union shall respect the ~~[national]~~ identities of its Member States, inherent in their fundamental...

Explanation

The differences between the concepts of state and nation, citizenship and nationality are blurred in the constitutional proposal, which could lead to confusion. The text of the draft uses the term 'nation' and 'nationality' as an equivalent to the concepts of 'state' and 'citizenship', even though they cover different concepts. This kind of difference is especially significant for the new Central European countries, where statehood and nationality usually differ more significantly than in the cases of the present member states. However also in the cases of present member states one can find many examples of the presence of national minorities, and instances where the state frameworks do not correspond with the nations or peoples in which they are included. From a constitutional point of view it is very important to mark a clear difference between these concepts.

AMENDMENT FORM

Suggestion for amendment of Article : 9

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status : - Member ~~Alternate~~

Artikel 9: ~~Anwendung der Grundprinzipien~~ **Grundsatz der loyalen Zusammenarbeit**

(1) Nach dem Grundsatz der loyalen Zusammenarbeit achten die Mitgliedstaaten und die Union einander, unterstützen sich gegenseitig bei der Erfüllung der sich aus dieser Verfassung ergebenden Aufgaben und unterlassen alle Maßnahmen, welche die Verwirklichung der Ziele dieser Verfassung gefährden könnten.

(2) Die Mitgliedstaaten treffen alle geeigneten Maßnahmen allgemeiner oder besonderer Art zur Erfüllung der Verpflichtungen, die sich aus dieser Verfassung oder aus Handlungen der Organe der Union ergeben.

(3) Die Union achtet die nationale Identität der Mitgliedstaaten.

~~(1) Die Verfassung und das Recht, das von den Organen der Union in Ausübung der ihnen von der Verfassung zugewiesenen Zuständigkeiten gesetzt wird, haben Vorrang vor dem Recht der Mitgliedstaaten.~~

~~(2) Bei der Ausübung der nicht ausschließlichen Zuständigkeiten der Union wenden die Organe das Subsidiaritätsprinzip nach dem Protokoll über die Anwendung der Grundsätze der Subsidiarität und der Verhältnismäßigkeit im Anhang zur Verfassung an. Das in diesem Protokoll vorgesehene Verfahren gestattet es den nationalen Parlamenten der Mitgliedstaaten, auf die Einhaltung des Subsidiaritätsprinzips zu achten.~~

~~(3) Bei der Ausübung der Zuständigkeiten der Union wenden die Organe den Verhältnismäßigkeitsgrundsatz nach demselben Protokoll an.~~

~~(4) Die Mitgliedstaaten treffen alle geeigneten Maßnahmen allgemeiner oder besonderer Art zur~~

~~Erfüllung der Verpflichtungen, die sich aus der Verfassung oder aus Handlungen der Organe der Union ergeben.~~

~~(5) Nach dem Grundsatz der loyalen Zusammenarbeit erleichtern die Mitgliedstaaten der Union die Erfüllung ihrer Aufgabe und unterlassen alle Maßnahmen, welche die Verwirklichung der Ziele der Verfassung gefährden könnten. Die Union verhält sich den Mitgliedstaaten gegenüber loyal.~~

~~(6) Die Union achtet die nationale Identität ihrer Mitgliedstaaten, die mit deren grundlegenden Struktur und den wesentlichen Aufgaben eines Staates — insbesondere seiner politischen und verfassungsrechtlichen Struktur einschließlich der Organisation der staatlichen Behörden auf nationaler, regionaler und kommunaler Ebene — zusammenhängt.~~

Explanation (if any) :

Artikel 9 in der vom Präsidium vorgeschlagenen Fassung stellt eine unglückliche Mischung aus Grundprinzipien (Anwendungsvorrang des Gemeinschaftsrechts, Absatz 1), redaktionellen Verweisen auf Protokolle (Absatz 2 und 3) und wieder Grundprinzipien (Absatz 4-6) dar.

Absatz 1:

Der hier aufgeführte (Anwendungs-)Vorrang des Unionsrechts ist ein Grundprinzip und gehört somit zu Artikel 8, dessen Absatz 1 wie folgt lauten sollte:

Art. 8. (1) Diese Verfassung und das auf dieser Grundlage gesetzte Recht der Union haben Anwendungsvorrang vor dem Recht der Mitgliedstaaten. Die einheitliche Anwendung in der gesamten Union ist sicherzustellen.

Absätze 2 und 3:

Die Weitergeltung der genannten Protokolle soll nicht in Frage gestellt werden, als redaktioneller Verweis sind diese Bestimmungen aber unnötig. Die Verfassung sollte statt dessen eine dem Art. 311 EGV entsprechende Bestimmung enthalten, wie dies bereits im Vorentwurf (Conv 369/02, S. 18) vorgesehen ist.

Absatz 4 bis 6:

Die hier enthaltenen Grundsätze zur loyalen Zusammenarbeit werden unter Einbeziehung von Artikel 8 Abs. 5, der ebenfalls einen Aspekt der loyalen Zusammenarbeit enthält, in einem neuen Artikel 9 zusammengefasst. Artikel 9 Absatz 1 sollte dabei den Grundsatz der loyalen Zusammenarbeit in allgemeiner Form benennen, Absätze 2 und 3 sollten seine rechtlich und politisch wichtigsten Ausprägungen enthalten.

AMENDMENT FORM

Suggestion for amendment of Article : 8

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status : - Member ~~Alternate~~

Artikel 8: Grundprinzipien

(1) ~~Für die Abgrenzung und Ausübung der Zuständigkeiten der Union gelten die Grundsätze der begrenzten Einzelermächtigungen, der Subsidiarität, der Verhältnismäßigkeit und der loyalen Zusammenarbeit.~~

Diese Verfassung und das auf dieser Grundlage gesetzte Recht der Union haben Vorrang vor dem Recht der Mitgliedstaaten. Die einheitliche Anwendung in der gesamten Union ist sicherzustellen.

(2) Nach dem Grundsatz der begrenzten Einzelermächtigungen wird die Union innerhalb der Grenzen der **ihr in dieser Verfassung zugewiesenen Zuständigkeiten und gesetzten Ziele** tätig, ~~die ihr von der Verfassung zur Verwirklichung der in dieser niedergelegten Ziele zugewiesen werden.~~ Alle der Union nicht durch **diese** Verfassung zugewiesenen Zuständigkeiten verbleiben bei den Mitgliedstaaten.

(3) Nach dem Subsidiaritätsprinzip wird die Union in den Bereichen, die nicht in ihre ausschließliche Zuständigkeit fallen, nur tätig, sofern und soweit die Ziele der in Betracht gezogenen Maßnahmen auf Ebene der Mitgliedstaaten nicht ausreichend erreicht werden können **und daher** wegen ihres Umfangs oder ihrer Wirkungen ~~aber~~ besser auf Unionsebene erreicht werden können.

(4) Nach dem Verhältnismäßigkeitsgrundsatz **sind gehen die Maßnahmen der Union zur Erreichung des angestrebten Zieles geeignet und** gehen inhaltlich wie formal nicht über das **dazu** für die ~~Erreichung der Ziele der Verfassung~~ erforderliche Maß hinaus.

(5) ~~Nach dem Grundsatz der loyalen Zusammenarbeit achten die Mitgliedstaaten einander und unterstützen sich gegenseitig bei der Erfüllung der sich aus der Verfassung ergebenden Aufgaben.~~

Explanation (if any) :

Artikel 8 ("Grundprinzipien") und Artikel 9 ("Anwendung der Grundprinzipien") sollten der Klarheit und Übersichtlichkeit halber neu geordnet werden.

Eine Unterscheidung zwischen den Grundprinzipien und ihrer Anwendung ist regelungstechnisch unüblich und inhaltlich unnötig.

Artikel 8 sollte stattdessen die allgemeinen Grundprinzipien enthalten, zu denen im übrigen auch der Vorrang des Gemeinschaftsrechts (im Entwurf Artikel 9 Abs. 1) gehört.

Artikel 9 sollte dagegen den besonderen Grundsatz der loyalen Zusammenarbeit in seinen verschiedenen Dimensionen aufführen. Artikel 9 würde damit die Bestimmungen, die im Entwurf über Art. 8 Abs. 5, 9 Abs. 4-6 verstreut sind, in einer Bestimmung zusammenfassen.

Absatz 1:

Seiner Bedeutung wegen sollte der Vorrang des Gemeinschaftsrechts an den Anfang von Artikel 8 gestellt werden. Der bisherige Artikel 8 Absatz 1 ist demgegenüber überflüssig.

Absatz 2:

Angleichung an die bisherige Formulierung in Art. 5 Abs. 1 EGV.

Absatz 3:

Angleichung an die bisherige Formulierung in Art. 5 Abs. 2 EGV.

Absatz 4:

Bestandteil des Verhältnismäßigkeitsprinzips ist auch die Geeignetheit der Maßnahme (Klarstellung im Sinne der Rechtsprechung des EuGH). Nach dem Verhältnismäßigkeitsgrundsatz darf zudem eine Maßnahme nicht über das mit ihr *konkret* verfolgte Ziel hinausgehen.

Die Grenzen, die durch die *Ziele der Verfassung* gesetzt werden, sind dagegen Maßstab des Prinzips der begrenzten Ermächtigung (vgl. Art. 5 Abs. 1 EGV), nicht des Verhältnismäßigkeitsprinzips.

Absatz 5:

Diese Bestimmung geht im Artikel 9 auf, der folgendermaßen lauten sollte:

Artikel 9: Grundsatz der loyalen Zusammenarbeit

(1) *Nach dem Grundsatz der loyalen Zusammenarbeit achten die Mitgliedstaaten und die Union einander, unterstützen sich gegenseitig bei der Erfüllung der sich aus dieser Verfassung ergebenden Aufgaben und unterlassen alle Maßnahmen, welche die Verwirklichung der Ziele dieser Verfassung gefährden könnten.*

(2) *Die Mitgliedstaaten treffen alle geeigneten Maßnahmen allgemeiner oder besonderer Art zur Erfüllung der Verpflichtungen, die sich aus dieser Verfassung oder aus Handlungen der Organe der Union ergeben.*

(3) *Die Union achtet die nationale Identität der Mitgliedstaaten.*

AMENDMENT FORM

Suggestion for amendment of Article : 9 para 2 and Article 16 para 2

By Mr : MacCormick, Neil

Status : - Alternate

Article 9, para 2

2- In exercising the Union's non-exclusive competences, the Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Constitution. The procedure set out in the Protocol shall enable the *Parliaments of the Member States* to ensure compliance with the principle of subsidiarity.

Article 16, para 2

2- Using the procedurethe Commission shall draw the attention *of the Parliaments of the Member States* to proposals based on this Article.

Explanation (if any) :

The concept 'nation' is a contested one and thus in certain contexts an ambiguous one. There should be consistent reference throughout to the more accurate term 'Member States'.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 9

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

Qualité : - Membre *X* - Suppléant

9.1 Insert at close « except in so far that laws passed 'notwithstanding the act of accession' hold primacy »

Explication éventuelle

National parliaments hereby retain final sanction to overturn Union law. If used, this reserve power would obviously necessitate a Council meeting to resolve the differences. However, this amendment is needed (1) as a mechanism for withdrawal from the treaties (2) because otherwise national parliaments surrender their sovereign powers to a higher federal authority (3) because the resulting sense of powerlessness in a national crisis has no safety valve other than outright withdrawal, and (4) on a practical note, because (as Thomas Paine observed) Parliament is sovereign in all things, except to circumscribe its own power. Nevertheless, just because national parliaments retain supremacy, does not mean to say that they will exercise it except in rare cases of major national importance. This amendment therefore maintains the Luxembourg compromise in the form of a vote by a parliament.

9.1 Delete.

Explication éventuelle

This is an attempt to codify the existing case law and illustrates that to do so may result in over-simplification. So best left for case law. All the caveats that would be required to make this accurate would also make it far too complex for a constitution.

9.2 Delete. Insert « The principle of subsidiarity shall be enforced by conferring First Reading on national parliaments ; Second Reading and the Committee Stages to the European Parliament ; and Third Reading on national parliaments. »

Explication éventuelle

The only way to ensure that subsidiarity is more than just an ignored and vague item in a dictionary is to put national parliaments properly in the legislative programme, at the outset and at the close.

9.5 After Constitution, insert « except in so far as such measures fall from objections made by the member state at the time of the framing of the common policy »

Explication éventuelle

Otherwise, national governments are constrained into enforced neutrality on an issue in which its vital national interests are at variance with a policy determined by QMV.

9.5 Delete « The union shall act loyally towards the Member States ». Insert « The member states of

the Union shall strive to maintain the greatest degree of cooperation and mutual benefit, in which task they will be faithfully served by their civil service, the European Commission

Explication éventuelle

The original texts reads as if it sets up a feudal structure between the member states on the one hand, and the EU, personified by the Commission, on the other.

9.5 Delete.

Explication éventuelle

This paragraph extends the strict definition of the principle of loyal cooperation found in the TEC to the Union as a whole. This could have implications for CFSP. As the principle of loyal cooperation is clearly stated already in Article 8, paragraph 5, this can be deleted.

9.6 At close, add « This clause takes precedence over harmonisation »

Explication éventuelle

Otherwise, the original clause is too imprecise and subjective to prevent any number of harmonising measures.

9.6 Delete replace with « The Union shall respect the national identities of its Member States, inherent in their sovereignty, their fundamental structures and essential State functions, especially their political and constitutional structure, including the organisation of public administration at national, regional and local level, and their responsibilities for the maintenance of law and order and for national security. »

Explication éventuelle

An inherent responsibility of any State is the maintenance of law and order and the protection of national security. This is sufficiently important to justify a specific reference in this article which deals with fundamental principles. Including a reference to the sovereignty of states helps to explain what the Union must respect.

9.7 New section. Insert « In cases where one quarter of national parliaments object to a proposal, that motion shall be reconsidered by the Council. In cases where one half of national parliaments object, the Union is prevented from pursuing that proposal. »

Explication éventuelle

This establishes the « yellow card/red card principle » (version one)

9.7 New section. Insert « In cases where one third of national parliaments object to a proposal, that motion shall be reconsidered by the Council. In cases where two thirds of national parliaments object, the Union is prevented from pursuing that proposal. »

Explication éventuelle

This establishes the « yellow card/red card principle » (version two)

9.7 New section. Insert « In cases where one national parliament objects to a proposal, that motion shall be reconsidered by the Council. In cases where more than one national parliament objects, the Union is prevented from pursuing that proposal. »

Explication éventuelle

This establishes the « yellow card/red card principle » (version three)

AMENDMENT FORM

Suggestion for amendment of Article 8 and Article 9

By: Mr Józef Oleksy

Status: Member

Proposed Amendments:

Article 8: Fundamental principles

1. The limits and use of Union competences are governed by the principles of conferral, subsidiary, proportionality and loyal cooperation.

New Article 8a

1. In accordance with the principle of conferral, 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.

2. The Constitution, and law adopted by the Union Institutions in exercising competences conferred on it by the Constitution, shall have primacy over the law of the Member States.

New Article 8b

1. In accordance with the principle of subsidiary, 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.

2. In exercising the Union's non-exclusive competences, the Institutions shall apply the principle of subsidiary as laid down in the Protocol on the application of the principles of subsidiary and proportionality annexed to the Constitution. The procedure set out in the Protocol shall enable national parliaments to ensure compliance with the principle of subsidiary.

New Article 8c

1. 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.

2. In exercising the Union's competences, the Institutions shall apply the principle of proportionality as laid down in the same Protocol.

New Article 8d

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 that flow from the Constitution.

2. In accordance with the principle of loyal cooperation, Member States shall facilitate the achievement of the Union's tasks and refrain from any measure that could jeopardize the accomplishing of objectives set out in the Constitution. The Union shall act loyally towards the Member States.

New Article 9

Member States shall take all appropriate measures, general or particular, to ensure fulfillment of the obligations flowing from the

Constitution or resulting from actions taken by the Union Institutions.

Explanation:

The new wording of article 8 and 9 of the Treaty is of a regular character. The definition will be combined with the explanation (regulation). As such, this allows for independently excluding the contents of the proposed art. 9, which is legally binding and conclusive (a general norm) for the application of rules contained in art. 8 and 8a- d.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 8

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

Qualité : - Membre *X* - Suppléant

8.1 and 8.2 Delete. Insert « The Union shall only act in instances where Member States can demonstrably achieve more through acting together than by acting alone. These actions must pass the tests of subsidiarity, proportionality and cost-effectiveness »

Explication éventuelle

The draft terminology need clarifying by a series of clear, and if possible objective, tests.

8.2 Delete « Constitution » (three times), insert « Treaties ».

Explication éventuelle

A constitution is a framework for a state (this amendment is consequential).

8.3 Delete « in areas which do not fall within its exclusive competence ».

Explication éventuelle

This deletion is consequential to the removal of exclusive Union competences.

8.3 Delete «sufficiently».

Explication éventuelle

This amendment removes some of the ambiguity in assessing the difficulty of the degree and its measurement, and makes subsidiarity a more objective test.

8.3 Delete «be better achieved», insert « only be achieved ».

Explication éventuelle

This amendment likewise removes some of the ambiguity in assessing the difficulty of the degree and its measurement, and makes subsidiarity a more objective test.

8.5 Delete paragraph

Explication éventuelle

« Loyal cooperation » requires clarification.

FICHE AMENDEMENT

Proposition d'amendement à l'Article 8

Déposée par Monsieur Ben Fayot (Chambre des Députés, Luxembourg)

Qualité : - Membre

Article 8 : Principes fondamentaux

1. La délimitation et l'exercice de compétences de l'Union sont régis par les principes d'attribution, de subsidiarité, de proportionnalité, **d'intégration** et de coopération loyale.

Motivation

L'intégration (ou encore le main streaming) est une façon d'exercer les compétences de l'Union souvent évoquée ces dernières années pour la politique de l'égalité des hommes et des femmes, ou encore à l'article 6 TCE pour la politique de l'environnement, et plus généralement pour la politique sociale dans les choix économiques.

Explication éventuelle :

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 9

Déposée par Madame ou Monsieur : **M. Louis Michel, M. Karel de Gucht, M. Elio di Rupo, Mme Anne Van Lancker, membres de la Convention et M. Pierre Chevalier et Mme Marie Nagy, membres suppléants de la Convention**

Qualité : - Membre - Suppléant

~~1. La Constitution et le droit adopté par les Institutions de l'Union dans l'exercice des compétences qui lui sont attribuées par celle-ci ont la primauté sur le droit des Etats membres.~~

1. L'étendue des compétences attribuées à l'Union est déterminée par les dispositions de la Partie III¹

2. Dans l'exercice des compétences non exclusives de l'Union, les Institutions appliquent le principe de subsidiarité conformément au Protocole sur l'application des principes de subsidiarité et de proportionnalité annexé à la Constitution. ~~La procédure prévue dans ce Protocole permet aux Parlements nationaux des Etats membres de veiller au respect du principe de subsidiarité.~~

3. Dans l'exercice des compétences de l'Union, les Institutions appliquent le principe de proportionnalité conformément à ce même Protocole.

4. Les Etats membres prennent toutes mesures générales ou particulières propres à assurer l'exécution des obligations découlant de la Constitution ou résultant des actes des Institutions de l'Union.

5. Conformément au principe de coopération loyale, les Etats membres facilitent à l'Union l'accomplissement de sa mission et s'abstiennent de toutes mesures susceptibles de mettre en péril la réalisation des **objectifs** de la Constitution. L'Union agit avec loyauté vis-à-vis des Etats Membres.

6. L'Union respecte l'identité nationale de ses Etats membres liée à leur structure fondamentale et aux fonctions essentielles d'un Etat, et notamment sa structure politique et constitutionnelle, y compris l'organisation des pouvoirs publics au

niveau national, régional et local.

Explication éventuelle :

- Para 1^{er} : La primauté du droit de l'Union doit figurer à l'article 1^{er}. Il s'agit en effet d'un principe fondateur et non pas d'une application de principes régissant la compétence.

L'étendue exacte des compétences doit, quelle que soit la catégorie à laquelle elles appartiennent, être définie par la partie III de la Constitution conformément au principe d'attribution. Cette disposition générale qui figure dans notre proposition à l'article 9 §1^{er} permet de faire l'économie de l'article 12 §2 et de la seconde phrase de l'article 15 §1^{er}.

- Para 2 : la deuxième phrase est purement descriptive et n'est pas nécessaire. Elle donne en outre l'impression erronée que seuls les parlements nationaux veillent au respect de la subsidiarité.
- Para 5 : en vue d'avoir une terminologie homogène, il paraît adéquat de remplacer but par « objectif »
- Le paragraphe 6 devra être ultérieurement complété par une référence aux droits particuliers des Régions à pouvoir législatif. Pour rappel, dans sa contribution (Conv 544/03), M. Michel avait proposé que les Etats membres puissent communiquer aux institutions de l'Union la liste des régions à pouvoir législatif ainsi que l'étendue de leurs compétences. Ces Régions à pouvoir législatif bénéficieraient de certains droits particuliers. L'article 9 § 6 devra être complété par un renvoi aux dispositions ou au Protocole consacrant ces droits.

¹ Dès lors que la Charte doit être intégrée dans la partie II

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 9

Déposée par Monsieur : Hannes FARNLEITNER

Qualité : - Membre

Art 9.1. *should be moved to Art.8 (see Art 8 above)*

Art 9.2 see explanation

Art 9.5. *should be moved to Art.8 (5)*

Art 9.6. The Union shall respect the national identities of its Member States, inherent in their fundamental structures and essential State functions, especially their political and constitutional structure, including the organisation of public administration at national, regional and local level, **their choices regarding language, national citizenship, territory, legal status of churches and religious societies, national defence and the organisation of armed forces.**

Explication :

Art 9.1. *should be moved to Art.8 : The primacy of Union law is a fundamental principle. Therefore the first paragraph of Art.9 on the application of fundamental principles should be shifted to Art.8*

Art 9.2. *After Art.5 (1) this is the second provision of the Constitution which refers to a Protocol. Would the Protocol on the application of the principles of subsidiarity and proportionality have the same constitutional/legal status as the Protocol on the Charter of Fundamental Rights?*

Art 9.5. : *The fifth paragraph of Art.9 should be moved to Art.8 (5) in order to express all aspects of the principle of loyal cooperation in a single treaty provision*

Art 9.6. *I highly welcome this provision. However, it should contain the entire wording of the recommendation of WG V (CONV 375/02).*

Furthermore Declaration No. 11 to the treaty of Amsterdam on the status of churches and religious societies should be incorporated into the Constitution.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 8

Déposée par Monsieur : Hannes FARNLEITNER

Qualité : - Membre

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 **or by the regional and local authorities on the basis of the competences conferred upon them by laws of Member States, and can therefore**, by reason of the scale or effects of the proposed action, be better achieved at Union level.

(...)

5. 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. **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.**

6. **The Constitution, and law adopted by the Union in conformity with this Constitution shall have primacy over the law of the Member States.**
-

Explication:

Art 8.3: *The principle of subsidiarity is of particular importance for regional and local authorities to defend their prerogatives granted by national constitutions and laws. Therefore they should be explicitly mentioned in the relevant treaty provision (see also my Contribution CONV 534/03). For the rest of the text we should stick to the wording in Art. 5 TEC ("and can therefore" instead of "but can rather"). Otherwise a double burden of proof would be imposed on the Union institutions which could excessively restrict their capacity to act.*

Art 8.5: *The fifth paragraph of Art.9 should be moved to Art.8 (5) in order to express all aspects of the principle of loyal cooperation in a single treaty provision.*

Art 8.6. *The primacy of Union law is a fundamental principle. Therefore the first paragraph of Art.9 on the application of fundamental principles should be shifted to Art.8.*

AMENDMENT FORM

Suggestion for amendment of Article : art. 8

By Ms / Mr : Ernâni Lopes

Status : - Member -

Article 8: Fundamental principles

- ~~1. The limits and use of Union competencies are governed by the principles of conferral, subsidiarity, proportionality and loyal co-operation.~~
- 2. The limits of Union competencies are governed by the principle of conferral.**
In accordance with the principle of conferral, the Union shall act within the limits of the competencies conferred upon it by the Constitution to attain the objectives the Constitution sets out. Competencies not conferred upon the Union by the Constitution remain with the Member States.
- 3. The use of Union competencies is governed by the principles of subsidiarity, proportionality and loyal co-operation.**
 - 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.
 - 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.
 - In accordance with the principle of loyal co-operation, the Union and the Member States shall, in full mutual respect, assist each other to carry out tasks which flow from the Constitution.
- 3. The Constitution, and law of adopted by the Union Institutions in exercising competencies conferred on it by the Constitution, shall have primacy over the law of the Member States.**

AMENDMENT FORM

Suggestion for amendment of Article :art. 9

By Ms / Mr :Ernâni Lopes

Status : - Member

Article 9: Application of fundamental principles

1. ~~The Constitution, and law adopted by the Union Institutions in exercising competencies conferred on it by the Constitution, shall have primacy over the law of the Member States.~~
2. In exercising the Union's non-exclusive competencies, the Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Constitution. The procedure set out in the Protocol shall enable national parliaments to ensure compliance with the principle of subsidiarity.¹
3. In exercising the Union's competencies, the Institutions shall apply the principle of proportionality as laid down in the same Protocol.
4. **In accordance with the principle of loyal co-operation,** 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.
5. **Following the same principle,** ~~In accordance with the principle of loyal co-operation,~~ 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.
6. ~~The Union shall respect the national identities of its Member States, inherent in their fundamental structures and essential State functions, especially their political and constitutional structure, including the organisation of public administration at national, regional and local level.~~

¹ A new version of the Protocol will be circulated shortly.

AMENDMENT FORM 7

Suggestion for amendment of Article 9 § 2

Suggestion for amendment of Article 16 § 2

By: M.J.CHABERT

M.M.DAMMEYER

M.P.DEWAEL

Ms. C.du GRANRUT

M.C.MARTINI

M.R.VALCARCEL SISO

Status : - ~~Member~~ - ~~Alternate~~ - Observer

"ROLE OF THE COMMITTEE OF THE REGIONS IN ENSURING RESPECT FOR THE SUBSIDIARITY PRINCIPLE"

Amend Article 9 §2 :

" In exercising the Union's non-exclusive competences, the Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Constitution. The procedure set out in the Protocol shall enable national parliaments and the Committee of the Regions, to ensure compliance with the principle of subsidiarity."

Amend Article 16 §2 :

" Using the procedure for monitoring the subsidiarity principle referred to in Article 9, the Commission shall draw Member States' national parliament' and, the Committee of the Regions' attention to proposals based on this Article."

Explanation:

The Convention's working groups on subsidiarity and on the role of national parliaments, as

well as the European Parliament resolution on the role of regional and local authorities in European integration, have recommended that the Committee of the Regions should participate in the subsidiarity monitoring mechanism. The 7 February 2003 debate confirmed broad support for this principle. The draft Article 9(2) omitted this reference. This article should therefore be supplemented, as should Article 16(2) (flexibility clause) which relates to it. The draft protocol on the application of the subsidiarity and proportionality principles will of course also need to indicate the role of the Committee of the Regions in each stage of the procedure.

FICHE AMENDEMENT

Proposition d'amendement à l' Article 8

Déposée par Monsieur : William ABITBOL

Qualité : Suppléant

Titre III : Des compétences de L'Union

Article 8 :

1. Les compétences de l'Union sont régies par les principes d'attribution, de subsidiarité, de proportionnalité et de coopération loyale.
 2. Selon le principe d'attribution, l'Union agit dans les limites des compétences qui lui sont attribuées par le présent traité en vue d'atteindre les objectifs qu'elle établit. Toute compétence non attribuée à l'Union par le traité constitutionnel appartient aux Etats membres.
 3. Selon le principe de subsidiarité, dans les domaines qui ne relèvent pas de sa compétence exclusive, l'Union intervient quand les objectifs de l'action envisagée n'ont pas été atteints par les Etats membres.
 4. Selon le principe de proportionnalité, le contenu, la forme et la durée d'intervention de l'Union n'excèdent pas ce qui est nécessaire pour atteindre les objectifs poursuivis.
 5. Selon le principe de coopération loyale, l'Union et les Etats membres se respectent et s'assistent mutuellement dans l'accomplissement des missions respectives ou complémentaires que leur assigne le présent traité constitutionnel.
-

Explication éventuelle :

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

AMENDMENT FORM

Suggestion for amendment of Article 8: Fundamental principles

By Mr Dick Roche, Representative of the Government of Ireland

Status : Member

Article 8: Fundamental principles – paragraph 2

2. In accordance with the principle of conferral, the Union shall act within the limits of the competences conferred upon it by **the Member States in** the Constitution to attain the objectives the Constitution sets out. Competences not conferred upon the Union by the Constitution remain with the Member States.

Explanation (if any) :

Clarification of source of competence.

AMENDMENT FORM 4

Amendment of Article 8

By: **M.J.CHABERT**
M.M.DAMMEYER
M.P.DEWAEL
Ms. C.du GRANRUT
M.C.MARTINI
M.R.VALCARCEL SISO

Status : - ~~Member~~ - ~~Alternate~~ - Observer

"RESPECT FOR THE INTERNAL DISTRIBUTION OF POWERS WITHIN THE MEMBER STATES"

Addition to Article 8 a paragraph 6 :

" 6. In the delimitation and exercise of competences, the Union shall respect the internal distribution of powers between the different institutional levels of the Member States, as laid down in their respective constitutions."

And

I. Addition to Article 8 §2+ §3 :

...Member States or their regions or local authorities, according to the constitutional provisions in each Member State.

Explanation:

As **Vice-President J.-L.Dehaene** noted in his conclusions at the end of the plenary session of 7 February 2003 debate that the debate showed the Convention's willingness to recognize the role of the regions and local authorities in the Constitutional Treaty from its opening articles onwards.

Under the draft Article 1(2) "The Union shall respect the national identities of its Member States." The draft Article 9(6), which expands on Article 1(3), does indeed lay down that "The Union

shall respect the national identities of its Member States, inherent in their fundamental structures and essential State functions, especially their political and constitutional structure, including the organization of public administration at national, regional and local level."

However, the exchange of view showed that the text of the Constitution should recognize not only the internal structure of each State but also the internal distribution of powers between central government and regional and local authorities. Whereas there is no consensus in the Convention on recognizing a specific status for the legislative regions, there is a consensus on recognizing the existence of specific legislative powers at levels other than the central institutions of the Member State and the need for the Union to respect them.

It is proposed that a general clause is inserted for the whole of Title III covering the powers of the Union. Logically, this clause should appear in the article on fundamental principles. It would have the legal consequence that any reference to the Member States in the Constitutional Treaty is also equivalent to a reference to their regional and local authorities where applicable.

AMENDMENT FORM

Suggestion for amendment of Article 9: Application of fundamental principles

By Mr Dick Roche, Representative of the Government of Ireland

Status : Member

Article 9: Application of fundamental principles – paragraph 2

2. In exercising the Union's non-exclusive competences, the Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Constitution. The procedure set out in the Protocol shall enable national parliaments **of Member States** to ~~ensure compliance with~~ **monitor application of** the principle of subsidiarity.

Explanation (if any) :

To clarify the meaning of the Article

AMENDMENT FORM

Suggestion for amendment of Article 9: Application of fundamental principles

By Mr Dick Roche, Representative of the Government of Ireland

Status : Member

Article 9: Application of fundamental principles – paragraph 4

~~4. — 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.~~

Explanation (if any) :

Loyal Cooperation is an important principle which should be once and clearly in the Treaty. I have proposed an expanded Article 8.5. Articles 9.4 and 9.5 should, therefore, be deleted.

AMENDMENT FORM

Suggestion for amendment of Article 9: Application of fundamental principles

By Mr Dick Roche, Representative of the Government of Ireland

Status : Member

Article 9: Application of fundamental principles – paragraph 5

~~5. 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.~~

Explanation (if any) :

Loyal Cooperation is an important principle which should be once and clearly in the Treaty. I have proposed an expanded Article 8.5. Articles 9.4 and 9.5 should, therefore, be deleted.

AMENDMENT FORM

Suggestion for amendment of Article : 8

By Mr Hain

Status : Member

1. The use of Union competences is limited by the principles of conferred powers, subsidiarity, proportionality and loyal cooperation of the Union with the Member States in carrying out their tasks.
2. In accordance with the principle of conferred powers, the powers of the Union derive solely from the decision of the Member States to confer certain competences on the Union as defined in this Constitution. The Union shall act within the limits of the competences conferred upon it by this Constitution. Competences not conferred upon the Union by the Constitution remain with the Member States.
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 including, where powers have been granted to them by the laws of the relevant Member State, by their regional or local authorities, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.
4. *Praesidium draft is okay.*
5. *Praesidium draft is okay.*

Article 6 of TEC also contains an Integration Principle – consideration might be given to whether such should be included here or elsewhere.

Explanation (if any) :

Our suggested draft of paragraph 1 is attempting only to clarify.

Our suggested draft of paragraph 2 is attempting to clarify the principle of conferred powers.

The redrafted text of paragraph 3 repeats the proposal made in my submission to the Convention (CONV 526/03) to reflect the extent of application of the subsidiarity principle.

Article 6 of TEC also contains an Integration Principle – consideration might be given to whether such should be included here or elsewhere.

AMENDMENT FORM

Suggestion for amendment of Article 8: Fundamental principles

By Mr Dick Roche, Representative of the Government of Ireland

Status : Member

Article 8: Fundamental principles – paragraph 5

5. In accordance with the principle of loyal cooperation, the Union and the Member States shall, in full mutual respect, **actively and unreservedly** assist each other **in fulfilling the Union's principles and objectives and in implementing its policies as set out in this** ~~to~~ **carry out tasks which flow from the Constitution. The Member States shall refrain from any action which could jeopardise the attainment of those objectives or which would be likely to undermine the Union's effectiveness. The Union shall act loyally towards the Member States.**

Explanation (if any) :

The important principle of loyal cooperation should be stated once in a comprehensive way in the Treaty. This proposal draws together material in Articles 9.4, 9.5 and 14, which would then be deleted.

The question of the jurisdiction of the ECJ, in particular in relation to second and third pillar issues, will require clarification.

AMENDMENT FORM

Suggestion for amendment of Article : 9

By Mr Hain

Status : Member

1. *Delete.*
2. In exercising the Union's non-exclusive competences, 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 proportionality annexed to this Constitution. The procedure set out in the Protocol shall enable national parliaments to ensure compliance with these principles.
3. *Delete. See para 2 and comment below.*
4. *Delete.*
5. *Delete.*
6. The Union shall respect the national identities of its Member States, inherent in their *sovereignty*, their fundamental structures and essential State functions, especially their political and constitutional structure, including the organisation of public administration at national, regional and local level, *and their responsibilities for the maintenance of law and order and for national security.*

Explanation (if any) :

Paragraph 1 is an attempt to codify the existing case law and illustrates that to do so may result in over-simplification. So best left for case law. All the caveats that would be required to make this accurate would also make it far too complex for a constitution.

As a rule, we would like to see the principle of proportionality in conjunction with that of subsidiarity throughout the text. We have added it to paragraph 2 in both the first and second sentences. By doing this, paragraph 3 can be deleted as unnecessary. This paragraph could go into Article 8 as paragraph 5.

Paragraph 4 (and paragraph 5) is another iteration of the principle of loyal cooperation (see Article 8, 5). Nothing is lost through its deletion. It should be removed in the spirit of simplicity and clarity.

Paragraph 5 extends the strict definition of the principle of loyal cooperation found in the TEC to the Union as a whole. This could have implications for CFSP. As the principle of loyal cooperation is clearly stated already in Article 8, paragraph 5, this can be deleted.

Paragraph 6: An inherent responsibility of any State is the maintenance of law and order and the protection of national security. This is sufficiently important to justify a specific reference in this article which deals with fundamental principles.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 9 (5ème alinéa)

Déposée par Monsieur : Alain Lamassoure

Qualité : Membre

Article 9 (5ème alinéa)

5. Conformément au principe de coopération loyale, les Etats membres facilitent à l'Union l'accomplissement de sa mission et s'abstiennent de toutes mesures susceptibles de mettre en péril la réalisation des buts de la Constitution. ~~L'Union agit avec loyauté vis-à-vis des Etats Membres.~~

Explication : *La dernière phrase peut être supprimée, à partir du moment où l'obligation de loyauté mutuelle a été insérée à l'article 1§2 (voir mon amendement à cet article 1§2)*

AMENDMENT FORM

Suggestion for amendment of Article 9: Application of fundamental principles

By Mr Dick Roche, Representative of the Government of Ireland

Status : Member

Article 9: Application of fundamental principles – paragraph 1

1. **In the exercise of the competences conferred on the Union by the Member States,**
~~The Constitution, and law adopted by the Union Institutions in exercising competences~~
~~conferred on it by the Constitution,~~ shall have primacy over the law of the Member States.

Explanation (if any) :

In respecting this well established principle, Article 9.1 should be clear that it is *because* the Member States have conferred competence on the Union that the Constitution and Union laws have primacy over the laws of Member States.

AMENDMENT FORM

Suggestion for amendment of **Article 9: Application of fundamental principles**

By Mr Dick Roche, Representative of the Government of Ireland

Status : Member

Article 9: Application of fundamental principles – paragraph 6

6. The Union shall respect the ~~national identities of its Member States, inherent in their~~ fundamental structures and essential State functions **of the Member States**, especially their political and constitutional structure, including the organisation of public administration at national, regional and local level.

Explanation (if any) :

To make it clear that national identity is not limited to fundamental structure and essential state functions of Member States (particularly when read in conjunction with Article 1.2).

Recognition of the the responsibilities incumbent on Member States with regard to the maintenance of law and order and the safeguarding of internal security (cf Articles 33, 35.5 TEU, Art. 64.1 TEC) should be included either here or at an appropriate place elsewhere in the Constitution.

AMENDMENT FORM 1

Amendment of Article 1 § 2

Amendment of Article 9 § 6

By: M.J.CHABERT

M.M.DAMMEYER

M.P.DEWAEL

Ms. C.du GRANRUT

M.C.MARTINI

M.R.VALCARCEL SISO

Status : - ~~Member~~ - ~~Alternate~~ - Observer

"RECOGNITION OF DIVERSITY"

– **Addition to Article 1 §2 :**

" The Union shall respect the national identities of its Member States, their cultural and linguistic diversity and the principle of local and regional autonomy."

And

– **Addition to Article 9 §6 :**

" The Union shall respect the national identities of its Member States and their cultural, linguistic and territorial diversity, inherent in their fundamental structures and essential State functions, especially their political and constitutional structure, including the organisation of public administration at national, regional and local level."

Explanation:

The debate during the Convention meeting of 7 February 2003 showed broad support for a comprehensive definition of national identity, which would bring out more clearly the need for explicit recognition of the diversity principle.

AMENDMENT FORM

Suggestion for amendment of Article 9 :

By Pervenche Berès, Olivier Duhamel, Maria Berger, Jacques Floch, Anne Van Lancker, Luis Marinho :

Status : Member

ARTICLE 9 : APPLICATION DES PRINCIPES FONDAMENTAUX

Alinéa 2 : « Dans l'exercice des compétences non exclusives de l'Union, les Institutions appliquent le principe de subsidiarité conformément à *l'acte additionnel* sur l'application des principes de subsidiarité et de proportionnalité annexé à la Constitution. La procédure prévue dans *l'acte additionnel* permet *au Parlement européen* et aux Parlements nationaux de *contrôler* le respect du principe de subsidiarité.

Alinéa 3 : « Dans l'exercice des compétences de l'Union, les Institutions appliquent le principe de proportionnalité conformément à ce même *acte additionnel* ».

Alinéa 5 (dernière phrase) « l'Union agit avec loyauté vis à vis des Etats *membres* ».

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Explanation (if any) :

AMENDMENT FORM

Suggestion for amendment of Article 9: Application of fundamental principles

By Mr Dick Roche, Representative of the Government of Ireland

Status : Member

Article 9: Application of fundamental principles – new paragraph 7

Add a new paragraph to read :

7. The Union shall exercise its competences to implement the policies defined in Part Two of the Constitution in accordance with the provisions specific to each area which are there set out.

Explanation (if any) :

This paragraph is currently included as Article 10.6 under ‘Categories of Competence’. As it describes how fundamental principles are to be applied and is not a ‘category of competence’ it should be included in Article 9.

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 9 (4ème alinéa)

Déposée par Monsieur : Alain Lamassoure

Qualité : Membre

Article 9 (4ème alinéa)

4. Les Etats membres prennent toutes mesures générales ou particulières propres à assurer l'exécution des obligations découlant de la Constitution ou résultant des actes des Institutions de l'Union **et dans les délais prévus par ceux-ci.**

Explication : *La déloyauté la plus habituelle de certains Etats membres, et la plus difficile à parer, est la longueur des délais de transposition ou d'application.*

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 9

Déposée par M. Hubert HAENEL, membre, et M. Robert BADINTER, suppléant.

Article 9: Application des principes fondamentaux

1. La Constitution et le droit adopté par les Institutions de l'Union dans l'exercice des compétences qui lui sont attribuées par celle-ci ont la primauté sur le droit des États membres.
2. Dans l'exercice des compétences non exclusives de l'Union, les Institutions appliquent le principe de subsidiarité conformément au Protocole sur l'application des principes de subsidiarité et de proportionnalité annexé à la Constitution. La procédure prévue dans ce Protocole permet aux Parlements nationaux des États membres de veiller au respect du principe de subsidiarité.
3. Dans l'exercice des compétences de l'Union, les Institutions appliquent le principe de proportionnalité conformément à ce même Protocole.
4. Les États membres prennent toutes mesures générales ou particulières propres à assurer l'exécution des obligations découlant de la Constitution ou résultant des actes des Institutions de l'Union.
5. Conformément au principe de coopération loyale, les États membres facilitent à l'Union l'accomplissement de sa mission et s'abstiennent de toutes mesures susceptibles de mettre en péril la réalisation des buts de la Constitution. L'Union agit avec loyauté vis-à-vis des États membres.
6. L'Union respecte l'identité nationale des États membres ~~liée à leur structure fondamentale et aux fonctions essentielles d'un État~~, et notamment leurs structures constitutionnelles et politiques, y compris l'organisation des pouvoirs publics au niveau national, régional et local.

Explication éventuelle :

6. Modification rédactionnelle.

AMENDMENT FORM

Suggestion for amendment of Article : Article 8, para 3

By Mr : MacCormick, Neil

Status : - Alternate

Article 8 para 2, add nineteen words

'...the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the member States *or by their regional and local authorities on the basis of the powers conferred on them under national law*, but can rather by reason of the scale or effects of the proposed action, be better achieved at Union level.'

Explanation (if any) :

This follows the proposal of the European Parliament in the Napolitano Report concerning subsidiarity. To insert these words would also confirm the consensus of the Convention during its debate on 7 February.

AMENDMENT FORM

Suggestion for amendment of Article : Artículo 8

By Ms / Mr : Borrell (miembro), Carnero y López Garrido (miembros suplentes)

Status : - Member - Alternate

Sustituir el punto 3 por el siguiente texto: “3. Según el principio de subsidiariedad y en el marco del sistema de competencias fijado en esta Constitución, la Unión intervendrá conjuntamente con los Estados miembros cuando los objetivos de la acción pretendida no puedan garantizarse eficazmente en solitario ni por aquella ni por estos”.

Explanation (if any) :

FICHE AMENDEMENT

Proposition d'amendement à l'Article 9

Déposée par Monsieur William ABITBOL

Qualité : Suppléant

Article 9 :

1. A l'exclusion des domaines de la compétence exclusive de l'Union, les Parlements nationaux veillent au respect des principes de l'article 8, selon les modalités du protocole annexé au présent traité ; dans les domaines de compétence exclusive de l'Union, ils veillent à l'application des décisions de l'Union.

2. L'Union reconnaît la compétence exclusive des Etats membres dans l'organisation de leurs pouvoirs publics et de leurs collectivités territoriales.
L'Union reconnaît expressément la souveraineté de chaque Etat membre dans l'expression du suffrage universel.

Explication éventuelle :

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

FICHE AMENDEMENT

Proposition d'amendement à l' Article 8

Déposée par Monsieur : William ABITBOL

Qualité : Suppléant

Titre III : Des compétences de L'Union

Article 8 :

1. Les compétences de l'Union sont régies par les principes d'attribution, de subsidiarité, de proportionnalité et de coopération loyale.
 2. Selon le principe d'attribution, l'Union agit dans les limites des compétences qui lui sont attribuées par le présent traité en vue d'atteindre les objectifs qu'elle établit. Toute compétence non attribuée à l'Union par le traité constitutionnel appartient aux Etats membres.
 3. Selon le principe de subsidiarité, dans les domaines qui ne relèvent pas de sa compétence exclusive, l'Union intervient quand les objectifs de l'action envisagée n'ont pas été atteints par les Etats membres.
 4. Selon le principe de proportionnalité, le contenu, la forme et la durée d'intervention de l'Union n'excèdent pas ce qui est nécessaire pour atteindre les objectifs poursuivis.
 5. Selon le principe de coopération loyale, l'Union et les Etats membres se respectent et s'assistent mutuellement dans l'accomplissement des missions respectives ou complémentaires que leur assigne le présent traité constitutionnel.
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Explication éventuelle :

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

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 9, point 6

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 9

Principes fondamentaux

3. L'Union respecte l'identité nationale de ses États membres liée à leur structure fondamentale et aux fonctions essentielles d'un État, et notamment sa structure politique et **son droit constitutionnel**, y compris l'organisation des pouvoirs publics au niveau national, régional et local.