

AMENDMENT FORM

Suggestion for amendment of Article : III-62

By Ms / Mr : Mr Bonde

Status : **X - Member** - Alternate

Article III-62 (ex Article 95)

1. By way of derogation from [ex Article 94] and save where otherwise provided in the Constitution, this Article shall apply for the achievement of the objectives set out in [ex Article 14]. A European law or framework law shall establish measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market. It shall be adopted after consulting the Economic and Social Committee.
2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons or to those relating to the rights and interests of employed persons.
3. The Commission, in its proposals submitted under paragraph 1 concerning health, safety, **VETERINARY AND** environmental protection and consumer protection, will take as a base **THE HIGHEST** level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective.
4. If, after the adoption of a harmonisation measure by means of European law or framework law or a Commission regulation, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in [ex Article 30], or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.

5. Moreover, without prejudice to paragraph 4, if, after the adoption of a harmonisation measure by means of a European law or framework law or a Commission regulation, a Member State deems it necessary to introduce national provisions based on **THE PRECAUTIONARY PRINCIPLE** OR scientific evidence relating to the protection of the environment or the working environment **[DELETE: on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure,]** it shall notify the Commission of the envisaged provisions and the reasons for them.

6. The Commission shall, within six months of the notifications as referred to in paragraphs 4 and 5, adopt a European decision approving or rejecting the national provisions involved after having verified whether or not they are a means of arbitrary discrimination **[Delete: or a disguised restriction on trade between Member States and whether or not they constitute an obstacle to the functioning of the internal market.]** **IF THE COMMISSION FIND THAT THE MEASURES DECIDED BY A MEMBER STATE OR GROUP OF MEMBER STATES FOR PROTECTING THE ENVIROMENT AND THE OTHER PURPOSES MENTIONED IN ART III-62,3 AND ART. 62,4 MAY DISTURB TRADE BETWEEN MEMBER STATES OR THE FUNCTIONING OF THE INTERNAL MARKET THE COMMISSION MAY PROPOSE MEASURES OR COMPENSATIONS TO BE ADOPTED THROUGH THE LEGISLATIVE PROCEDURE.**
IF A SPECIFIC MEASURE IS NOT ADOPTED WITHIN 12 MONTH THE MEASURES INTRODUCED BY THE MEMBER STATES OR A GROUP OF MEMBER STATES SHALL BE DEEMED TO HAVE BEEN APPROVED.

In the absence of a decision by the Commission within this period the national provisions referred to in paragraphs 4 and 5 shall be deemed to have been approved.

When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.

7. When, pursuant to [paragraph 6], a Member State is authorised to maintain or introduce national provisions derogating from a harmonisation measure, the Commission shall immediately examine whether to propose an adaptation to that measure.

8. When a Member State raises a specific problem on public health in a field which has been the subject of prior harmonisation measures, it shall bring it to the attention of the Commission which shall immediately examine whether to propose appropriate measures.

9. By way of derogation from the procedure laid down in [ex Articles 226 and 227], the Commission and any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in this Article.

10. The harmonisation measures referred to in this Article shall, in appropriate cases, include a safeguard clause authorising the Member States to adopt, for one or more of the non-economic reasons referred to in [ex Article 30], provisional provisions subject to a Union control procedure.

Explanation (if any) :

Harmonisation in the field of health, safety, working environment, veterinary standards, consumer protection and environmental protection shall always be based on the highest level of protection and not the more arbitrary “high level”.

If the highest level raises problems for some Member States the Commission may propose temporary derogations for those countries, without hindering countries wishing to pioneer higher standards.

If Member States use the higher standards of protection as a mean for economic protectionism and to discriminate against the import of products from other Member States the Commission may propose special measures or compensation to be paid so that the pioneering of higher standards is not seen by poorer countries as economic discrimination.

Since the right balance may be rather sensitive such measures shall be adopted by elected representatives through the legislative procedure and not only by Commission civil servants.

By allowing pioneers to be innovative the EU can benefit from the experience in environment and animal friendly ways of protections. This can promote the decrees of diseases (like salmonella and BSE) and be used to create more know-how used for export. This pioneer right would provide a reversed burden of proof opposite to the environmental guarantee Art. III-62,4-5.