

AMENDMENT FORM

Suggestion for amendment of Article : III-163

Suggestion for Part III

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Status : - Member

Article III-163 (ex Article 12)

1. The Union shall develop, **in line with the reception capacities of the Member States**, a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration ~~and trafficking in human beings~~.
 2. To this end, a European law or framework law shall establish measures in the following areas:
 - (a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion;
 - (b) the definition of the rights of third-country nationals residing legally ~~legally~~ **or legally exercising a gainful activity** in a Member State, including the conditions governing the freedom of movement and of residence in other Member States;
 - (c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation.
 - ~~(d) combating trafficking in persons, in particular women and children.~~
 3. The Union may conclude readmission agreements with third countries for the readmission of third-country nationals residing without authorisation to their countries of origin or provenance.
 4. A European law or framework law may establish measures providing incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.
 - 5. Measures adopted by the Council pursuant to this Article shall not prevent any Member State from maintaining or introducing in the areas concerned national provisions which are compatible with this Constitution and with international agreements.**
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Explanation (if any) :

The European Council adopted the Laeken Declaration on the Future of Europe, which includes the aspect of reception capacities in relation to illegal immigration. Consequently, this issue should be incorporated in the present document.

EU legal acts should focus on the migration aspect and leave marginal issues such as study grants or

social allowances to the national legislations, thus stressing the principle of subsidiarity. Moreover, such legal areas should not be included in a legal act dealing with migration unless a specific need for a common European regulatory framework has been established.

At Tampere the European Council called for an approximation of national laws on the conditions for admission and residence of third-country nationals. In view of the Tampere conclusions this principle should, therefore, be re-emphasised.

For structural reasons, the combat against trafficking of persons belongs not in the article on immigration but substantive criminal law, where it has already be anchored in Art. 17.

Contrary to the last comment referring to draft Article 12, Part Two of the Constitution, in Doc. CONV 614/03, it does indeed seem necessary to add to this draft article, which is one of shared competence and does not provide for minimum standards in this sector, the principle currently set out at the end of Article 63 TEC in order to ensure that Member States may maintain national provisions or introduce new ones in this sector, providing that they are compatible with Union law. It is proposed to add this amendment since draft Article 12, Part One of the Constitution, in Doc. CONV 528/03, foresees in paragraph 3 that: “Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.” It follows that the Member States would no longer be able to act once the Union has exercised its competence.

Article III-163 paragraph (2) (b) :

Due to the clear wording of Article 63 paragraph (4) of the EC-Treaty Reg. 859/2003 extending Reg. 1408/71 to third country nationals could only become applicable to persons legally residing in a Member State. Persons legally residing in a third stat but legally gainfully active in a Member State are excluded. This unsatisfactory situation should be solved:

In Article III-163 paragraph (2) (b) after the words “residing legally” the words “or legally exercising a gainful activity” should be inserted.