

AMENDMENT FORM

Suggestion for amendment of Article 14: (Title Area of freedom, security and justice, Part II of the Treaty)

By: Teija Tiilikainen, Antti Peltomäki, Kimmo Kiljunen, Matti Vanhanen, Riitta Korhonen, Esko Helle

Status : **Tiilikainen, Kiljunen, Vanhanen - Members**
 Peltomäki, Korhonen, Helle - Alternates

Article 14 : [Judicial cooperation in civil matters]

1. The Union shall develop judicial cooperation in civil matters based on the principle of mutual recognition of judgments and decisions in extrajudicial cases. Such cooperation shall include the adoption of measures for the approximation of national laws having cross-border implications.
2. **In the field of judicial cooperation in civil matters having cross-border implications and insofar as necessary for the proper functioning of the internal market** ~~To this end,~~ the European Parliament and the Council, in accordance with the legislative procedure, shall adopt laws and framework laws aiming ~~inter alia~~ to ensure:
 - the mutual recognition and enforcement between Member States of judgments and decisions in extrajudicial cases;
 - the cross-border service of judicial and extrajudicial documents;
 - the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction;
 - cooperation in the taking of evidence;
 - a high level of access to justice **through minimum rules relating to legal aid as well as minimum standards on specific aspects of civil procedural law governing cross-border litigation;**
 - the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;
 - the development of ~~measures of preventive justice and~~ alternative methods of dispute settlement;
 - support for the training of the judiciary and judicial staff.

3. ~~The Council, on a proposal from the Commission, shall unanimously¹ adopt laws and framework laws concerning family law; it shall act after consulting the European Parliament. The European Parliament and the Council, in accordance with the legislative procedure, shall adopt laws and framework laws concerning parental responsibility.~~

The Council shall act unanimously, on a proposal from the Commission and after consulting the European Parliament, on measures referred to in paragraph 2 concerning family law other than those relating to parental responsibility.

Explanation

By making a specific link with cross border cases and with the internal market, the existing treaty article on civil judicial co-operation (Article 65 TEC) takes broadly the right approach which ought to be maintained. There has however been some confusion, created mainly by inconsistencies between different language versions, as to whether or not the list of measures laid down by that provision is intended to be exhaustive. In particular, neither the English nor Finnish translations, for instance, contains a formula corresponding to the French “entre autres”. To remove any uncertainty about what the Union can or cannot do, the words “inter alia” should be dropped from the draft Article.

The phrase “a high level of access to justice” in the fifth indent of paragraph 2 is too ambiguous and open-ended. Its meaning should be clarified. None the less, the text of our suggestion would have the advantage of being on a general level and thereby allowing the article to be used as a legal basis for several different initiatives and not just the ones mentioned in the Praesidium’s commentary. The proposed wording would also be in line with the conclusion 34 of the European Council held in Tampere. Likewise, the meaning of the expression “measures of preventive justice” in the seventh indent is not sufficiently clear. The phrase concerned should therefore be either dropped or its meaning clarified.

As regards, finally, paragraph 3, the text should make it plain that all that the paragraph concerned does is introduce an exception, in the field of family law, to the decision-making procedure provided for in paragraph 2. Paragraph 3 should not under any circumstances give the impression that the Union had been given a general competence to take measures in the area of family law.

¹ ~~Once it has considered Part Two in its entirety, it will be for the Convention to take a decision across the board on any exceptions to the qualified majority rule and, consequently, on the voting rules which should apply in this and other Articles of this draft which refer to unanimity.~~