

AMENDMENT FORM

Suggestion for amendment of Article : 165 (ex Article 14), part III of the Constitution

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Article III-165 (ex Article 14)

1. The Union shall develop judicial cooperation in civil matters having cross-border implications **and insofar as necessary for the proper functioning of the internal market**, based on the principle of mutual recognition of judgments and decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.

2. To this end, a law or framework law shall lay down measures aimed ~~inter alia~~ at ensuring:

- (a) the mutual recognition and enforcement between Member States of judgments and decisions in extrajudicial cases;
- (b) the cross-border service of judicial and extrajudicial documents;
- (c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction;
- (d) cooperation in the taking of evidence;
- (e) a high level of access to justice though minimum rules relating to legal aid as well as minimum standards on specific aspects of civil procedural law governing cross-border litigation;
- (f) the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;
- (g) the development of alternative methods of dispute settlement;
- (h) support for the training of the judiciary and judicial staff.

3. Notwithstanding paragraph 2, measures ~~concerning those~~ **with** aspects **relating to** ~~of~~ family law ~~with cross-border implications~~ shall be laid down in a European framework law by the Council. It shall act unanimously after consulting the European Parliament.

The Council, on a proposal from the Commission, may adopt a European decision determining those aspects of family law **referred to in previous subparagraph** ~~with cross-border implica-~~

tions which may be adopted by the ordinary legislative procedure. The Council shall act unanimously after consulting the European Parliament.

Explanation (if any) :

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 as to whether or not the list of measures laid down by that provision is intended to be exhaustive. 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. It is not possible to know what this indent covers and what it does not cover. Its meaning should be clarified. The text of our suggestion (a high level of access to justice though minimum rules relating to legal aid as well as minimum standards on specific aspects of civil procedural law governing cross-border litigation) 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 but giving at the same time information about the subject-matter of these possible initiatives.

As regards, thirdly, paragraph 3, the text should make it plain that all that the paragraph concerned does is introduce an exception, insofar as concerns aspects relating to family law covered the draft article, 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.