

AMENDMENT FORM

Suggestion for amendment of Article : Article 32

Suggestion for protocol :

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Status : Tiilikainen, Kiljunen, Vanhanen - Members
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Article 32

1. The Union may commit itself through agreements concluded with one or more third countries or international organisations in cases where the provisions of the Constitution provide for the conclusion of such agreements.
2. ~~The Union may conclude association agreements with one or more third countries or international organisations. Such agreements shall establish an association with one or more third countries or international organisations involving reciprocal rights and obligations, common action and special procedure.~~
3. The Union may conclude international agreements where this Constitution has created for the Union powers within its internal system for the purpose of attaining a specific conclusion is necessary to achieve a Union-objective and the conclusion of agreement is necessary for the attainment of that objective, where there is provision for it in a Union legislative act, or ~~where insofar as~~ the agreements affects one of the Union's internal acts.
4. Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States.

New Article 32bis

The Union may conclude association agreements with one or more third countries or international organisations. Such agreements shall establish an association with one or more third countries or international organisations involving reciprocal rights and obligations,

Explanation (if any) :

Explanation 32(2) and 32bis: There should be a separate Article for association agreements due to their specific nature and importance. This concerns especially the Union's neighbouring areas. In addition, this provision is of substantive nature where as the rest of Article 32 contains horizontal provisions applicable to all international agreements. Therefore, we propose a new Article 32bis.

Explanation 32(3): Both the suggested amendments aim at a more accurate codification of the relevant case law of the European Court of Justice. Insofar as concerns the so-called principle of parallelism, the Court has stated 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). This means that 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.

As regards, secondly, the so-called ERTA principle, the Court has made it plain that the Union's external competence only arises insofar as the conclusion of an international agreement could affect one of the Union's internal acts (e.g., Opinion 1/94 [1994] ECR I-5267, para. 77).