

## AMENDMENT FORM

### Suggestion for amendment of Article 12:

By Elmar BROK, Jozsef SZAJER, Erwin TEUFEL, René VAN DER LINDEN, Frantisek KROUPA, Jacques SANTER, Teresa ALMEIDA GARRETT, Peter ALTMAIER, Piia Noora KAUPPI, Göran LENNMARKER, Hanja MAIJ-WEGGEN, Reinhard RACK, Joachim WÜRMEILING

on behalf of the EPP Convention Group

Status: Members and Alternates

---

*Text of the Praesidium*

*Proposed Amendments*

#### Article 12: Shared competences

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 11 and 15 .

2. The scope of shared competences is determined by the provisions of Part Two.

3. Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.

4. Shared competence applies in the following principal areas:

- internal market
- area of freedom, security and justice
- agriculture and fisheries
- transport
- trans-European networks
- energy

#### Article 12: Shared competences

~~1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 11 and 15 .~~

~~2. The scope of shared competences is determined by the provisions of Part Two.~~

~~3. Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.~~

~~4. Shared competence applies in the following principal areas:~~

- *harmonisation of laws in the area of the internal market, as far as not covered by Article 11, including environmental, consumer protection, social, and fiscal measures where they contribute to the functioning of the internal market,*

- social policy
  - economic and social cohesion
  - environment
  - public health, and
  - consumer protection.
5. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.
6. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.
- area of freedom, security and justice, *including asylum, immigration policy, judicial cooperation in civil and criminal matters, approximation of criminal rules and policy cooperation, in particular to combat organised crime,*
  - agriculture and fisheries, *including animal protection,*
  - transport (*rail, road, inland waterway, sea and air*),
  - trans-European networks,
  - energy, *including a policy of high nuclear safety and security standards,*
  - social policy, *with the exception of the organisation of social security schemes and the harmonisation of industrial relations,*
  - *the combating of all discrimination within the meaning of Article 21 of the Charter,*
  - economic and social cohesion,
  - environment, *with the exception of the quantitative management of water resources and town and country planning,*
  - *the combating of threats to public health of a significant cross-border nature,*
  - ~~consumer protection,~~ [already included in first indent]
  - *prudential supervision,*
  - *intellectual property,*
  - *the prevention of and fight against fraud affecting the financial interests of the Union.*
- 5.2 In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that

competence may not result in Member States being prevented from exercising their competence.

~~6.3~~ In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.

**4. (new) The details regarding the extent of the shared competences are set out in Part Two of the Constitution.**

---

## Explanation:

### *Para 1, 2 and 3:*

- Also with regard to shared competences, it must be clear from the text of Article 12 alone in which fields the Union may legislate or take action. ***It is not acceptable that for the determination of such major issues of power, there is only a reference to Part Two of the Constitution.*** It is therefore suggested to delete paras 1, 2 and 3 and to establish instead ***a comprehensive list of the shared competences of the Union***, based on the existing acquis.

### *Para 3 (now 1):*

- is meant to establish a comprehensive list of the Union's shared competences;
- ***harmonisation of laws in the area of the internal market, as far as not covered by Article 11, including internal-market related environmental, consumer protection, social, and fiscal measures:*** seeks to clarify the distinction between the exclusive competence under Article 11 (the four fundamental freedoms of the internal market) and the competence under the current Article 95 EC Treaty (harmonisation of laws in the field of the internal market). The definition further clarifies that under this competence, the Union may also adopt environmental, consumer protection, social and fiscal measures as long as there is an internal-market context. This covers in particular the existing competences in Articles 42, 93 and 153(3)(a) of the EC Treaty.
- ***area of freedom, security and justice:*** must be more specific and include a reference to the competences currently exercised under Articles 61(a), (b) and 63, 64, 65 EC and Articles 29(2), last indent, 30, 31 and 32 of the EU Treaty.
- ***including animal protection:*** included to ensure that the provisions of the Protocol on animal protection (which should be annexed to the Constitution) are also observed in the context of Union legislation.
- ***transport (rail, road, inland waterway, sea and air):*** incorporates Article 80 of the EC Treaty.
- ***energy, including a policy of high nuclear safety and security standards;*** incorporates the essence of the Euratom Treaty into the competence list.

- *the combating of discrimination within the meaning of Article 21 of the Charter: incorporates the competences under Article 12(2) and 13 of the EC Treaty.*
- ***public health:** under Article 152(1), Community action in this field shall only “complement” national policies. Public health therefore would fall under the supporting competences of the Union (Article 15 in the Praesidium text). This does of course not exclude that internal-market related measures under Article 12 seek to achieve a high level of human health protection, as required for all Union activities by Article 35 of the Charter of Fundamental Rights. In addition, we see a certain need to have a special share competence which could be used in case of threats to public health of a significant cross-border nature, such as the combating of a very infectious disease or of a particularly dangerous virus.*
- ***prudential supervision:** incorporates the competences under Article 105(5) and (6) of the EC Treaty.*
- ***the prevention of and fight against fraud affecting the financial interests of the Union:** incorporates the shared competence under Article 280 of the EC Treaty.*

**Para 4(new):**

*Only with regard to the details, a reference to Part Two appears to be acceptable.*