

FICHE AMENDEMENT

Proposition d'amendement à l'Article : 8

Déposée par Monsieur : Hannes FARNLEITNER

Qualité : - Membre

3. In accordance with the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States **or by the regional and local authorities on the basis of the competences conferred upon them by laws of Member States, and can therefore**, by reason of the scale or effects of the proposed action, be better achieved at Union level.

(...)

5. In accordance with the principle of loyal cooperation, the Union and the Member States shall, in full mutual respect, assist each other to carry out tasks which flow from the Constitution. **Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the objectives set out in the Constitution. The Union shall act loyally towards the Member States.**

6. **The Constitution, and law adopted by the Union in conformity with this Constitution shall have primacy over the law of the Member States.**

Explication:

Art 8.3: The principle of subsidiarity is of particular importance for regional and local authorities to defend their prerogatives granted by national constitutions and laws. Therefore they should be explicitly mentioned in the relevant treaty provision (see also my Contribution CONV 534/03). For the rest of the text we should stick to the wording in Art. 5 TEC ("and can therefore" instead of "but can rather"). Otherwise a double burden of proof would be imposed on the Union institutions which could excessively restrict their capacity to act.

Art 8.5: The fifth paragraph of Art.9 should be moved to Art.8 (5) in order to express all aspects of the principle of loyal cooperation in a single treaty provision.

Art 8.6. *The primacy of Union law is a fundamental principle. Therefore the first paragraph of Art.9 on the application of fundamental principles should be shifted to Art.8.*