

AMENDMENT FORM

Suggestion for amendment of Article 9

By Mr Andrew Duff, Mr Dimitrij Rupel, Mr Paul Helminger, Lord MacLennan and Mr István Szent-Iványi and Mr Lamberto Dini.

Status: Members and alternate members.

Article 9: Application of fundamental principles

- 9.1 The Constitution, and law adopted by the Union institutions in exercising competences conferred on it by the Constitution, shall have primacy over the law of the Member States.
- 9.2 *The Union* shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Constitution. The procedure set out in the Protocol shall enable national parliaments to ensure compliance with the principle of subsidiarity.
- 9.3 In exercising the Union's competences, the *institutions* shall apply the principle of proportionality as laid down in the same Protocol.
- 9.4 Member States shall take all appropriate measures, general or particular, to ensure fulfilment of the obligations flowing from the Constitution or resulting from actions taken by the Union *institutions*.
- 9.5 In accordance with the principle of loyal cooperation, 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.
- 9.6 The Union shall respect *the political and constitutional structures of the Member States*, including the organisation of public administration at national, regional and local level.

Explanation:

9.2 *This amendment seeks to extend the application of the principle of subsidiarity to the exclusive competences of the Union. It has always been anomalous that subsidiarity should not inform the decisions of the Union in the areas where it enjoys the greatest concentration of power. The derogation, introduced by the Maastricht Treaty, seems out of sympathy with a Union that is seeking to be more consultative, to give greater recognition to the role of regional and local authorities and to decentralise the management of some of its common policies.*

In Article 11 we will try to widen the definition of exclusivity to include the application of the four freedoms to internal market matters.

The integration of the Charter also serves to redefine the concept of subsidiarity to embrace the relationship between the individual and the Union authority.

The use of the term Union's 'Institutions' should be minimised. The institutions act for and on behalf of the Union. (In any case here and elsewhere they deserve only lower case.)

9.5 *We drop the sentence: "The Union shall act loyally towards the Member States". The Constitution should not legitimise the notion that there is or can be a separation of interests between that of the Union on the one hand and its collective Member States on the other. In the emerging federal constitutional order of states there is a unified purpose and identity and a single institutional system.*

9.6 *The Praesidium's formulation is repetitive (see their Article 1.2 and our 2.2) in its respect for the national identities of the states. It also makes a presumption about the concept of nation state sovereignty which is not universally shared today. Our amendment is shorter, clearer, simpler and more accurate.*