

AMENDMENT FORM

Suggestion for amendment of Article 9:

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on behalf of the EPP Convention Group

Status: Members and Alternates

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*Text of the Praesidium*

*Proposed Amendments*

**Article 9: Application of fundamental principles**

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.
2. In exercising the Union's non-exclusive competences, the Institutions 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.
3. In exercising the Union's competences, the Institutions shall apply the principle of proportionality as laid down in the same Protocol.
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.

**Article 9: Application of fundamental principles**

- [1. *Union law prevails over national law.* ~~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.~~]

**– SEE THE NEW ARTICLE 4a (AS SUGGESTED ON BEHALF OF THE EPP CONVENTION GROUP)**

2. In exercising the Union's non-exclusive competences, the *Union* Institutions 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 *political early-warning* procedure set out in the Protocol shall enable national parliaments to ensure compliance with the principle of subsidiarity.
3. In exercising the Union's competences, the *Union* Institutions shall apply the principle of proportionality as laid down in the same Proto-

col.

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. The Union shall act loyally towards the Member States.

[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.]

– **SEE THE NEW ARTICLE 4b (AS SUGGESTED ON BEHALF OF THE EPP CONVENTION GROUP)**

6. The Union shall respect the national identities of its Member States, inherent in their fundamental structures and essential State functions, especially their political and constitutional structure, including the organisation of public administration at national, regional and local level.

[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. The Union shall act loyally towards the Member States.]

– **SEE THE NEW ARTICLE 4a (AS SUGGESTED ON BEHALF OF THE EPP CONVENTION GROUP)**

[6. The Union shall respect the national identities of its Member States, ~~inherent in their fundamental structures and essential State functions, especially~~ their political and constitutional structure, including ~~the organisation of public administration at national,~~ regional and local level *self-government, their choices regarding language, and the legal status of churches, religious societies and non-confessional organisations.*]

– **SEE ARTICLE 1 PARAGRAPH 3 (AS SUGGESTED ON BEHALF OF THE EPP CONVENTION GROUP)**

## **Explanation:**

### **Para 1:**

- The supremacy of Union law is the main constitutional principle of the *acquis* since 1964 and one of the foundations of the *acquis communautaire*. For reasons of legal certainty and constitutional logic, we suggest to include this principle already in the Title “Definition and objectives” (see our proposal for a **new Article 4a**), and not only in Title III on Union competences, as it is currently proposed by the text of the *Praesidium* in Article 9(1). The principle of supremacy does not only play a role when the Union exercises its competences (= enacts secondary law), but also applies to the law of the Treaties (now the Constitution) itself (= primary law). This is already recognised in the wording of Article 9(1) of the *Praesidium* text, but not yet in the positioning of this pivotal provision. As an illustration for an alternative positioning of the principle, see also Article 62 in the EPP Discussion Paper (Frascati version, as amended, 27 January 2003).

### **Para 2:**

- The constitutional text itself should determine the main characteristics of the new control procedure at the disposal of national parliaments, namely that it is (1) a political mechanism and (2) an early-warning mechanism. Only the details should be set out in the Protocol.

### **Paras 4 and 5:**

- For the reasons which also apply to the principle of supremacy, the important principle of Union loyalty should be set out already in the previous Title of the Constitution as it goes beyond a principle which merely applies in the context of the exercise of Union competences. We therefore propose a new Article 4b on Union loyalty (for a more detailed explanation, see our amendment proposing a **new Article 4b**). As an illustration for an alternative positioning of the principle, see also Article 63 in the EPP Discussion Paper (Frascati version, as amended, 27 January 2003).

### **Para 6:**

- The wording should be amended to reflect properly the outcome of Convention Working Group V “Complementary Competencies.
- In addition, the entire provision should be positioned already in the previous Title of the Constitution; see our amendment on Article 1(2) of the *Praesidium* text.