

AMENDMENT FORM

Suggestion for amendment of Article : 31

Suggestion for protocol :

By ~~Ms~~/ Mr : Hain with the support of Lord Tomlinson

Status : - Member - ~~Alternate~~

1. The Union shall ensure an area of freedom, security and justice:
 - By adopting laws and framework laws ~~intended in particular~~ where appropriate to approximate national laws in the areas listed in Part Two of the Constitution;
 - by promoting mutual confidence between the competent authorities of the Member States, ~~in particular on the basis of mutual recognition of judicial and extrajudicial decisions.~~
 - By ensuring that Member States place full faith in each others' judicial decisions and apply the principle of mutual recognition on the widest possible basis
 - By promoting operational co-operation between all competent authorities of the Member States responsible for ~~internal security law enforcement.~~
 2. *Okay.*
 3. *Okay.*
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Explanation (if any) :

The draft article gives undue weight to approximation, and as an end in itself rather than as a means. There must be a sense that approximation only takes place where appropriate. In addition, laws setting up law enforcement bodies will not necessarily be concerned with approximating national legislation.

The Constitution should express the principle of mutual recognition in clear and unambiguous terms.

Our amendments (a) clarify that the Union's role is to promote operational co-operation and (b) use more precise terminology. In the draft articles, the term "internal security" is used throughout the articles, both in contexts where it is intended to describe tasks which do fall to the Union and in contexts where it describes something which is specifically reserved to the Member States. This is potentially confusing. The term "law enforcement" is used in the current Article 30(1)(a) TEU and is more appropriate here.

As we make clear in our comments on Article 10, the UK intends to retain its special position on

frontiers. This position has had implications for the UK's participation in certain related areas of co-operation, including legal migration measures, visas and external borders. The JHA articles in the new Treaty will in due course need to be qualified by a reference to the UK's special position and the arrangements which govern it.

Working Group X's report drew attention to the concern that Member States should be able to conclude bilateral or multilateral agreements in the area of judicial co-operation even if the Union had adopted internal rules on a particular matter. This is an extremely important issue in the light of the proposal to merge the pillars and Treaties. Although the working group suggested that the question might be considered in the context of external action, this has not yet been followed up. The UK would welcome further work in the Convention on this question with a view to drawing up arrangements specific to judicial co-operation.

Working Group X concluded that adequate data protection rules were in place for existing third pillar bodies, but that the various supervisory bodies could be merged. The commentary on Article 21, by contrast, envisages applying general Community law on data protection to the current Third Pillar, and states that a new general article on data protection will be proposed in the Title on the Democratic life of the Union. In the UK's view, this article should either envisage data protection rules specific to the former Third Pillar which would be adopted by unanimity, or should incorporate on the face of the Treaty some of the important special provisions already found in the current data protection directive (95/46/EC), relating in particular to judicial matters and to national security.

It will be necessary to have a provision or provisions in the JHA chapter to preserve the unanimity procedure for all legislation in the Title which affects tax.