

AMENDMENT FORM

Suggestion for amendment of Article : Title ...: Area of freedom, security and justice, 17

Suggestion for protocol :

By / Mr : Hain With the support of Lord Tomlinson, substitute

Status : - Member -

Article 17: [Substantive criminal law]

[Amalgamate chapeau and first indent to create a new paragraph 1]

1.

The European Parliament and the Council, in accordance with the legislative procedure, may adopt framework laws containing minimum rules concerning the definition of incriminations and sanctions:

—in the areas of particularly serious crime with cross-border dimensions resulting from the nature or impact of the offences ~~or of a special need to prosecute them jointly~~. These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, and attacks against information systems, computer crime and organised crime. The Council, on the basis of developments in crime and acting unanimously after obtaining the assent of the European Parliament, may identify other areas of crime that meet the criteria specified in this indent;

[Second indent – replace with a new paragraph 2:]

2. Framework laws may be adopted under this paragraph containing minimum rules concerning the definition of incriminations and sanctions in areas of crime affecting a common interest which is the subject of a Union policy referred to in the following articles of this Constitution if criminal sanctions prove essential to ensure the effective implementation of the policy:

[list – e.g. the policy on combating facilitation of illegal immigration referred to in Article 12, the policy on combating discrimination based on racial origin referred to in [Article 13 TEC]]

Framework laws adopted under this paragraph shall be adopted:

- by the Council, acting unanimously after consulting the European Parliament, where the Council is required to follow this procedure when adopting laws or framework laws in the policy area concerned;
- by the European Parliament and the Council, in accordance with the legislative procedure, where the European Parliament and the Council are required to act in accordance with the legislative procedure when adopting laws or framework laws in the policy area concerned.

The Council, acting unanimously after consulting the European Parliament, may extend the list of Union policies referred to above.

3. A framework law adopted in accordance with this Article may not specify the minimum sanction that must be imposed in an area of crime.

Explanation (if any) :

Article 17 : *The approach taken in the first indent is helpful, and reflects Working Group X's report. The principle of an exhaustive list of crimes for which the Union has competence to define minimum definitions of offences and penalties is consistent with the need to define which tasks are for the Union and which are for Member States. Our amendments seek to clarify the article still further. The phrase referring to a need for "joint prosecution" is unclear; we are not aware of any such concept. The reference to computer crime is imprecise and potentially very wide-ranging. The terminology of "attacks against information systems" reflects the language of the recent Commission initiative in this area. Finally, the list is intended to cover specific types of crime, and should not therefore list "organised crime" generally. We would be open to considering the addition of references to specific forms of organised crime in place of this general reference. The mechanism for adding new types of crime to the list can in particular take account of developments in organised crime.*

Article 17(2) : *This amendment has two purposes. First, it seeks to define the areas of Union policy where there would be competence to define incriminations and sanctions more precisely, using the sort of list based approach taken in relation to serious cross-border crime. It is essential to have clarity in the Treaty as to the precise areas where there would be competence to approximate substantive criminal law. Second, the amendment follows the recommendation of Working Group X, which the draft articles ignore, that the voting rules for deciding rules on incriminations and sanctions should follow the rules of the Union policy area concerned. If the policy area concerned were governed by unanimity (for example anti-discrimination measures under ex-Article 13 TEC) any criminal law measures would also be decided by unanimity.*

Article 17(3) : *This amendment is intended to clarify that framework laws on substantive criminal law must not require the imposition of mandatory minimum penalties. Measures adopted by the Council in this area under the Treaty on European Union have laid down rules either on the*

minimum maximum penalty which must be laid down in national law (i.e. “a maximum of at least X years...”) or *penalty ranges (i.e. “a maximum of between at least X and Y years...”)*. This has proved an effective way of respecting the diversity of Member States’ legal systems, and in particular the discretion afforded to judges in many systems. We hope that the Treaty would exclude the possibility of measures requiring all Member States to impose a minimum penalty of at least x years on anyone convicted of a crime covered by Article 17, irrespective of the circumstances or any mitigating factors.