

AMENDMENT FORM

Suggestion for amendment of Article : III-166

By Mr Hain

Status : Member

1. Judicial co-operation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include, where necessary and taking account of the different legal traditions and systems of the Member States, the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article [III-167].

A European ~~law or~~ framework law shall establish measures to:

- (a) establish rules and procedures aimed at ensuring the recognition throughout the Union of all forms of judgments and judicial decisions;

- (b) facilitate co-operation to prevent and settle conflicts of jurisdiction between Member States;

A European law or framework law shall establish measures to :

- (c) support encourage the training of the judiciary and judicial staff to facilitate co-operation under this section;

- (d) facilitate co-operation in criminal matters between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.

2. To the extent that it is necessary ~~In order~~ to facilitate mutual recognition of judgments and judicial decisions ~~and police and judicial co-operation in criminal matters having cross-border implications~~-, a European framework law may establish minimum rules in the following areas to prevent discrimination on grounds of nationality in cases with a cross-border dimension:

- (a) the provision of legal advice;

- (b) the provision of information to individuals about their rights in criminal procedure;

- (c) access to interpretation and translation facilities;

- (d) access to diplomatic or consular authorities.
 - (a) mutual admissibility of evidence between Member States ;
 - (b) definition of rights of individuals in criminal procedure ;
 - (c) rights of victims of crime ;
 - (d) any other specific aspects of criminal procedure which the Council has identified in advance by a European decision.
- The Council shall act unanimously after receiving the approval of the consulting the European Parliament.

Adoption of such minimum rules shall not prevent Member States from maintaining or introducing a higher level of protection for the rights of individuals in criminal procedure.

Explanation (if any) :

Paragraph 1 should repeat the language in Article III-153 which makes clear that such action should take into account the different legal systems and traditions of the Member States.

The amendment to 1(b) reflects the fact that conflicts of jurisdiction are best addressed by arrangements to ensure practical co-operation, the implementation of which can be supported by Eurojust. The EU's role should be to facilitate cooperation to resolve rather than prevent conflicts of jurisdiction. The word "prevent" gives the EU the ability to prohibit Member States from taking criminal jurisdiction over certain acts. Although this exists in the existing article in the TEU, the competence of the EU to resolve conflicts of jurisdiction should be clarified.

It may be appropriate to use laws to create bodies or networks in areas such as judicial training. Otherwise measures under paragraph 1 should only be made using framework laws, reflecting the fact that mutual recognition measures will need to allow Member States choice over how to give effect to them thereby taking into account their particular legal system and preserving a role for national parliaments.

Paragraph 2 is unacceptable in its current form. In particular, the intent on the "definition of the rights of individuals in criminal procedure" would cover almost any aspect of criminal procedure during an investigation, prosecution and conviction. It is essential that this article is restricted in scope and is made subject to unanimity.