

## AMENDMENT FORM

### Suggestion for amendment of Article : III-167

By Mr Hain

Status : Member

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1. A European framework law may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with cross border dimensions resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

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, computer crime and attacks against information systems and organised crime.

On the basis of developments in crime, the Council may adopt a European decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after approval by the European Parliament.

2. If the approximation of criminal legislation proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, a European framework law may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. The Council shall adopt a European decision identifying the policy area or areas to which this paragraph applies and the extent to which rules may be established in the area or areas under this paragraph. It shall act unanimously after approval by the European Parliament.

Without prejudice to Article [III-160], ~~that such~~ framework laws shall be adopted by the same procedure as was followed for the adoption of the harmonisation measures referred to in the preceding subparagraph.

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.

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**Explanation (if any) :**

*The reference to “organised crime” should be deleted. There is no such criminal offence in the UK, nor in fact, in many other Member States. The mechanism for adding new types of crime to the list can in particular take account of developments in organised crime. Finally, 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.*

*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 reference to “organised crime” should be deleted. There is no such criminal offence in the UK, nor in fact, in many other Member States. The mechanism for adding new types of crime to the list can in particular take account of developments in organised crime. Finally, 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.*

*Alternatively, as proposed in this amendment, Union policies that meet the criteria set out in this paragraph should be listed in a separate European Decision specifying the policy areas and approximation required. This would be agreed by unanimity. The second subparagraph helpfully clarifies that the voting rules for the subsequent framework law would follow those of the Union policy area concerned.*

*The suggested new paragraph 3 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 III-167, irrespective of the circumstances or any mitigating factors.*