

AMENDMENT FORM

Suggestion for amendment of Article : 167 (ex Article 17), part III of the Constitution

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Status : Tiilikainen, Kiljunen, Vilén - Members
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Article III-167 (ex Article 17)

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 **and** 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~~ organised crime, **fraud against the financial interests of the Union, assistance for illegal entry and residence, counterfeiting and piracy of goods, environmental crime, racism and xenophobia.**

On the basis of developments in **serious cross-border** 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.~~

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

Explanation (if any) :

We recall that the areas where competence is conferred on the Union to approximate the minimum constituent elements of substantive criminal law is necessary should be defined as precisely as possible in the Treaty. Union competence in this field should be defined in an exhaustive list of crimes confined to serious crimes having a clear cross-border dimension. In our view, this should also apply to crimes directed against the common interest of the Union. Those

crimes should, moreover, be subject to the double criteria of the seriousness and cross-border nature of the crime. In other words, the fact that a particular kind of crime could potentially be directed against the Union's interests and that criminal sanctions were deemed to be required for the effective pursuance and implementation of the Union's policies should not in itself to be regarded as a sufficient ground for enacting Union legislation on substantive criminal law.

The present draft does not fully meet this goal which has been supported by a vast majority of the members of Convention. The proposed Article III-167, paragraph 2, would confer on the Union nearly unlimited power to enact legislation on the definition of incriminations and also sanctions. We find this unacceptable. The crimes envisaged by paragraph 2 should also be listed in an exhaustive fashion and linked to the criteria laid down in paragraph 1 of draft Article III-167.

Finally, while there should be flexibility to amend the list, we recall the Union's action on substantive criminal law should not be driven by short-term pressures. The power to add to the list should be reserved for cases where new forms of serious transnational organised crime emerge, and where a Union response is clearly required.