The implications of the Court's judgment of 13 September 2005 (Case C-176/03 Commission v Council): the Commission's right of initiative, distribution of powers between the first and third pillars as regards provisions of criminal law

2006/2007(INI) - 21/02/2006

The Council agreed on a procedure to be followed within the Council when a Commission proposal involves measures relating to the criminal law of the Member States, as follows:

"The Presidency will draw the attention of Coreper II to any legislative proposal submitted by the Commission which contains provisions on criminal law.

The Presidency, after seeking Coreper II's guidance, will refer the proposal to an appropriate working party for examination, taking into account all relevant factors, such as its content, its aim and the expertise required. The Presidency will keep the Article 36 Committee informed, ensuring an opportunity for JHA experts to offer views on criminal law provisions from an early stage of negotiation, which can then be conveyed to the relevant working party. Each delegation is responsible for coordinating internally on all aspects of the proposal.

The Presidency will refer the proposal as necessary to Coreper II, which shall submit any relevant question to the JHA Council.

Coreper II shall review the effectiveness of these arrangements by June 2007."

By judgment of 13 September 2005, the European Court of Justice annulled Framework Decision 2003/80 /JHA on the protection of the environment through criminal law: measures intended to protect the environment fall within the competence of the Community (Art 175 TEC) even when they involve measures relating to the criminal law of the Member States. Therefore the Framework Decision encroached on competences attributed to the Community, and therefore failed to respect Article 47 TEU.