Basic information

2006/2007(INI) INI - Own-initiative procedure	Procedure completed
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 **Subject** 7.40.04 Judicial cooperation in criminal matters 8.40.10 Interinstitutional relations, subsidiarity, proportionality, comitology	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs	GARGANI Giuseppe (PPE-DE)	29/11/2005

Committee for opinion	Rapporteur for opinion	Appointed
CONT Budgetary Control	The committee decided not to give an opinion.	
ENVI Environment, Public Health and Food Safety	The committee decided not to give an opinion.	
TRAN Transport and Tourism	The committee decided not to give an opinion.	
LIBE Civil Liberties, Justice and Home Affairs (Associated committee)	CAVADA Jean-Marie (ALDE)	23/01/2006

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2709	2006-02-21

European Commission

Commission DG	Commissioner
Justice and Consumers	

Key events

Date	Event	Reference	Summary
23/11/2005	Non-legislative basic document published	COM(2005)0583	Summary
19/01/2006	Committee referral announced in Parliament		
19/01/2006	Referral to associated committees announced in Parliament		
21/02/2006	Debate in Council		Summary
04/05/2006	Vote in committee		Summary
08/05/2006	Committee report tabled for plenary	A6-0172/2006	
13/06/2006	Debate in Parliament		
14/06/2006	Decision by Parliament	T6-0260/2006	Summary
14/06/2006	Results of vote in Parliament		
14/06/2006	End of procedure in Parliament		

Technical information

Procedure reference	2006/2007(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Initiative
Legal basis	Rules of Procedure EP 55
Stage reached in procedure	Procedure completed
Committee dossier	JURI/6/32998

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE367.928	25/01/2006	
Amendments tabled in committee		PE370.302	07/03/2006	
Committee opinion	LIBE	PE370.016	12/04/2006	
Committee report tabled for plenary, single reading		A6-0172/2006	08/05/2006	
Text adopted by Parliament, single reading		T6-0260/2006	14/06/2006	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	COM(2005)0583	23/11/2005	Summary
Commission response to text adopted in plenary	SP(2006)3311	01/08/2006	

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) - 14/06/2006 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution based on the own-initiative report drafted by Giuseppe **GARGANI** (EPP-ED, IT) on the consequences of the judgment of the Court of Justice of 13 September 2005 (C-176/03 Commission/Council). (For a summary of Parliament's report, please see the preceding document.) The report was adopted by 523 votes in favour to 78 against with 57 abstentions.

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.

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) - 23/11/2005 - Non-legislative basic document

PURPOSE: to outline and assess the Commission's response the European Court of Justice's judgement on Case C-176/03, the Commission v Council

CONTENT: this Communication is the Commission's response to an ECJ judgement in which the Commission asked the Court to annul Council Framework Decision 2003/80/JHA *on the protection of the environment through criminal law.* The judgement, issued in September 2005, clarifies a long-standing dispute between the Commission and Council regarding the distribution of power in relation to the provision of criminal law and the distribution of power between the first and the third pillars. The aim of this Communication is three-fold. Firstly, to explain the conclusions drawn from the judgement. Secondly, to suggest a way forward with regard to those texts which, in light of the Court's ruling, have not been adopted in accordance with the correct legal basis and thirdly, to set out a course for the future use of the Commission's right of initiative.

As regards the first aim, namely an explanation of the judgement, the Court concludes that the Council Framework Decision infringes Article 47 of the TEU in that it encroaches on the powers which Article 175 confer on the Community. (Article 47 establishes the primacy of Community law over Title VI of the TEU). A further conclusion to be drawn from the judgement is that it lays down principles, which go beyond the case in question. In other words,

the same reasoning can be applied, in its entirety, to the four other freedoms – the movement of persons, goods, services and capital. At the same time, however, the judgement is clear that criminal law does not constitute a Community policy *per se* and that Community action in criminal matters must be based only on implicit powers associated with a specific legal basis.

In other words appropriate measures of criminal law can be adopted on a Community basis only, on a sectoral level only and only in cases where criminal law measures can guarantee an effective policy relating to one of the four freedoms. From this, the Commission concludes that, depending on the subject matter, the Court's reasoning can be applied to all Community policies and freedoms, which involve binding legislation. Whether or not to include criminal penalties on future proposals must be decided upon on a case by case basis. Crucially, the Commission does note that in presenting proposals containing criminal penalties, the dual principles of "necessity and consistency" must be applied.

As regards the general situation following-on from the distribution of powers between the first and the third pillar, the new legal landscape effectively brings to an end the double-text mechanism, which has been used on several occasions in the past. This implies that either a criminal law provision specific to the matter in hand is needed and subsequently adopted under the first pillar – or there is no need to resort to criminal law at an EU level. Current, horizontal law encouraging police and judicial co-operation, providing provisions on the principle of availability and providing provisions on the harmonisation of criminal law relating to creation of an area of freedom, security and justice, on the other hand, do all fall under the scope of Title VI of the TEU.

As a consequence of the judgement the Commission has prepared, in Annex, a list of all the Framework Decisions which it considers are entirely or partly incorrect. This list has been drawn up on the basis that they were adopted on an incorrect legal basis. The Framework Decisions listed include, *inter alia*, Decisions on the protection of the environment through criminal law; on combating fraud and counterfeiting of non-cash means of payment; and on the protection of the Community's financial interest. The Commission intends to regularise these texts as quickly as possible given that it has a duty to restore their legality. As an interim measure, the Commission has decided to appeal to the ECJ for an annulment of the Council Framework Decision to strengthen the criminal law framework for the enforcement of the law against ship source pollution. The appeal will be withdrawn once the proposal aiming to correct the legal basis of the framework Decision in question has been adopted.

In terms of how to rectify the present situation the Commission outlines several options. One approach proposed would be to review existing instruments with the sole purpose of bringing them into line with the distribution of powers between the first and the third pillar based on the Court judgement. Were this approach to be adopted the Commission would ensure that the proposal's do not contain any provisions differing in substance from those of the acts already adopted – even where the Commission felt these acts were not satisfactory. This approach offers a quick, easy solution. However, it can only work if both Parliament and the Council agree not to open discussion of substance during this special procedure and it requires the agreement of all three institutions.

Should the institutions decide not to adopt such a strategy the Commission would be forced into making use of its power of proposal in order to restore the correct legal basis. The Commission would take this opportunity to prioritise substantive solutions in line with what it judges to be in the best interests of the European Community. These proposals will then have to follow the full decision-making procedure process in accordance with their correct legal basis.