'Ius puniendi': The Right of the Institutions of the EC to Protect the Financial Interests of the EC from Fraud (Art. 280 paragraph 4 EC Treaty)?*

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1. Introduction

The importance of the judgment of the CJEC dated 13 September 2005 – C-176/03 (Commission/Council)¹ is nothing short of a new legal landmark. The Court of the European Communities has dealt with the basics of demarcation between EU law and EC law.² The subject-matter of the case concerned framework decision 2003/80/JI on the protection of the environment through criminal law³, through which the EU intended to institute a coordinated fight against the alarming increase of environmental crime. The decision identifies a number of environmental criminal acts as intentional (Art. 2) or negligent (Art. 3) offences and places upon its member states the obligation to provide for adequate penal sanctions. The Commission opposed the choice of Art. 34 EU in connection with Art. 29 and 31 lit. e EU as a legal basis for the framework decision. Instead it proposed that the matter be approached through the community law by way of a directive.⁴ The CJEC


shared its view and claimed that Articles 1 to 7 of the framework decision would fall into the Community’s sphere of competence pursuant to Art. 175 EC. The Court affirmed that the EC was competent for the subject-matter to be provided for, which would subsequently preclude any measures by the EU. In addition to the reasoning of the CJEC regarding the environmental competency of the EC as well as the distinction regarding the so-called ‘third pillar’ (PJCCM – police and judicial cooperation in criminal matters), the judgment has received particular attention because of the Court’s reasoning on the powers of the EC in criminal matters. Critics of the judgment already fear that community law will further influence criminal law.

A token of how important the judgment actually is, is that the Commission and the European Parliament have chosen to respond by way of a communication / decision and that they have provided their own interpretative approach. The Commission did so through its ‘Communication from the Commission to the European Parliament and the Council on the implications of the Court’s judgment of 13 September 2005 (Case C-176/03 Commission v Council)’. The European Parliament that had joined the Commission in its action commented on the contents and scope of the decision in its ‘European Parliament resolution on the consequences of the judgment of the Court of 13 September 2005 (C-176/03 Commission v Council)’. What makes the institutions of the EC provide interpretative guidance on a court judgment? On the one hand, this is certainly due to the usual ‘apodictive briefness of the court’s judgments’. It would not have been for the first time that unclear or too short comments by the European Court of Justice have led to misunderstandings, so interpretative support is indeed necessary. The Court – and the reactions that ensued – even surprised the institutions of the EC. The European Parliament has realised that it has overshot the mark with its action. It is obviously feared that the CJEC decision is over-interpreted as regards the competencies of the EC in criminal law. And this is rightly so: the decision of the European Court of Justice has been widely criticised among experts.

and amended proposal (COM (2002) 544)).

