The European Fight against Fraud – The Community’s Competence to Enact Criminal Laws and Its Power to Approximate National Criminal Law by Directives

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1. Introduction

The European Commission’s 2005 annual report concerning the Protection of the Communities’ financial interests estimates that the total financial impact of irregularities reported in 2005 reached € 1.042 billion.¹ The overall damage is believed to amount to at least 10–20 % of the Community’s budget.² According to

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news reports, around 40% of all requests for agricultural subsidies are imperfect; and in countries such as Cyprus (88.9%) and Portugal (77.3%) this number is even exceeded. These vast figures illustrate the Communities’ vital interest to fight frauds affecting their budget. Judicially, this can be achieved in different ways.

Since Member States have transferred sovereign rights to the Communities, making them a supranational organization, the Communities might be entitled originally enact criminal laws on the European plane. As regards to the financial interests, this may possibly be based on Article 280 (4) of the Treaty Establishing the European Community.

Understanding criminal law as a ‘core of state sovereignty’, Member States, though, might have avoided conferring such rights in the field of criminal law upon the Communities. Then, the Communities, however, may have the power to issue directives addressed to Member States, obliging them to criminalize frauds against the Communities’ in their own national legislation. The Commission resorted to this option in 2001 and 2002. It submitted a proposal for a directive concerning the protection of the Community’s financial interests to the European Parliament...