

Brussels, 13 September 2005

Court of Justice strengthens democracy and efficiency in European Community lawmaking

In a landmark ruling today, the European Court of Justice in Luxembourg decided that the competences of the European Community to protect the environment also include the power to require Member States to ensure such protection through criminal sanctions for serious offences. The Court annulled a Council Framework Decision adopted in 2003, reserving this competence to an intergovernmental decision under the “third pillar”. The Court thereby supported the position of the Commission. The judgement concerns a particular environmental legislation, but it sets an important precedent for Community law in general.

“This Court judgement breaks new ground, it strengthens democracy and efficiency in the European Union,” commented Commission President José Manuel Barroso. “It makes clear that wherever criminal sanctions are involved by Community law, they cannot be decided without full democratic control by the European Parliament. At the same time, the Court strengthens possibilities to enforce the law, once Member States have agreed on a European policy. This is a watershed decision, it paves the way for more democratic and more efficient lawmaking at EU level. This being said, it is clear that in line with our new regulatory approach, proposing criminal sanctions will be reserved only for particularly serious offences. We will make a careful and proportionate use of this possibility, in line with the principle of better regulation.”

As a test case, the Commission (supported by the European Parliament and the Economic and Social Committee) challenged before the European Court of Justice Council Framework Decision 2003/80 on the protection of the environment through criminal law. This Framework Decision had been adopted by the Council in 2003.

The central argument used by the Commission in taking this action against the Framework Decision was the following: the Commission claimed that requiring Member States to use criminal sanctions for violations of EC environment law has to be based on the law and decision-making procedures of the EC Treaty (the so-called “Community method”), and not on the “third pillar” of the EU Treaty, as had been the choice of the Council. The Council (supported by 11 Member States) took the view that no explicit provision in the EC Treaty could justify this approach.

The difference between a legal basis in the “third pillar” of the EU Treaty instead of the EC Treaty is very important. It has two major consequences. Firstly, a different legislative procedure: Under the EU Treaty, the Council acts unanimously on the proposal of a Member State or the Commission, with a marginal role of the European Parliament only. Under the EC Treaty, the Commission has the sole right of initiative the Parliament has its full rights as a co-legislator and the Council would decide by qualified majority.

Secondly, there is no infringement procedure available for acts adopted under the EU Treaty so the Commission has no power to force Member States to implement properly, which is of decisive importance for ensuring compliance.

The Court of Justice ruling of today confirmed the position of the Commission. Although, as a general rule, neither criminal law nor the rules of criminal procedure fall within the Community's competence, that does not prevent the Community legislature, when the application of effective, proportionate and dissuasive criminal penalties by the competent national authorities is an essential measure for combating serious environmental offences, from taking measures that relate to the criminal law of the Member States which it considers necessary in order to ensure that the rules which it lays down on environmental protection are fully effective. As a result of this reasoning, the Court today annulled Council Framework Decision 2003/80.

For the Commission, today's judgement is an important precedent. It will allow the Commission to continue and enhance its efforts to ensure compliance with provisions of European Community law also by means of criminal law. Where the Community has, under the EC Treaty, a legal basis to decide on policy (internal market, environment protection, data protection, protection of intellectual property, monetary matters, etc.), this includes the competence to provide for the enforcement of this policy through criminal sanctions, if needed. In such cases, the Council can therefore not evade the Commission's sole right of initiative or the European Parliament's right to co-decide by making use of the provisions of the EU Treaty. The judgement therefore facilitates enforcement of Community law while at the same time strengthening the democratic oversight in the EU legislative process.

The judgement will also strengthen the protection of the environment, as non-complying Member States can be forced to transpose and implement properly when obligations to foresee criminal sanctions derive from Community legislation.

The Commission will study carefully the implications of today's judgement for pending or imminent legislative procedures. The Commission will in particular look into adopting the substance of the annulled Council Framework Decision 2003/80 on the basis of the EC Treaty and following the co-decision procedure with Council and European Parliament.

Background

In March 2001, the Commission had proposed a Directive based on the environmental provisions of the EC Treaty (Article 175(1) EC Treaty). The Directive would have required Member States to ensure that a range of environmentally harmful activities – already outlawed by existing EC legislation – would be deemed to be criminal offences when committed intentionally or with serious negligence (see [IP/03/461](#)).

However, the Council was not in a position to adopt this proposal, lacking the necessary qualified majority. As a consequence, the Council opted for a Framework Decision under the "third pillar" of the EU Treaty, proposed by one Member State, based on the provisions on cooperation in judicial and criminal matters (Article 34(1)(b) in conjunction with Article 31(1)(e) of the EU Treaty).

Against this choice of the legal basis, the Commission brought an action for annulment against the Council.