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## **MOTION FOR A RESOLUTION**

further to Questions for Oral Answer B6-0438/2006 to the Council and B6-0439/2006 to the Commission

pursuant to Rule 108(5) of the Rules of Procedure

by Patrick Louis and Jens-Peter Bonde

on behalf of the IND/DEM Group

on the action to be taken on the judgment of principle handed down by the Court of Justice of the European Communities on 13 September 2005

**European Parliament resolution on the action to be taken on the judgment of principle handed down by the Court of Justice of the European Communities on 13 September 2005**

*The European Parliament,*

- having regard to Title IV of the EC Treaty and Title VI of the EU Treaty,
  - having regard to Articles 135 and 280 of the EC Treaty,
  - having regard to Articles 29, 30 and 31 of the EU Treaty,
  - having regard to the judgment of the Court of Justice of the European Communities (Grand Chamber) in Case C-176/03 - Commission of the European Communities versus the Council of the European Union,
  - having regard to the conclusions of Advocate-General Damaso Ruiz-Jarabo Colomer presented on 26 May 2005 in said Case C-176/03,
  - having regard to the Treaty establishing a Constitution for Europe, which became null and void on 29 May 2005,
  - having regard to the Communication of 23 November 2005 from the Commission to the European Parliament and the Council on the consequences of the judgment of the Court in Case C-176/03,
  - having regard to Rule 108(5) of its Rules of Procedure,
- A. whereas there has been no express conferral of powers in the field of criminal law, and whereas, given the considerable significance of criminal law for the sovereignty of Member States, there would be no grounds for accepting that these powers can have been implicitly transferred to the Community at the time when specific, substantive competences were conferred on it,
- B. whereas the grounds for judgment C-176/03 state that 'as a general rule, neither criminal law nor the rules of criminal procedure fall within the Community's competence' (point 47) and (in the extraordinary point 48) that this finding 'does not prevent the Community legislator [...] from taking measures which relate to the criminal law of the Member States [...] in order to ensure that the rules which it lays down are fully effective',
- C. whereas Articles 135 and 280 of the EC Treaty expressly reserve to the Member States the application of national criminal law and the administration of justice,
- D. whereas the Treaty on European Union devotes a specific title to judicial cooperation in criminal law matters (see Articles 29 *et seq.*), in particular as regards the determination of the constituent elements of the relevant offences and penalties,

- E. whereas secondary legislation has always restated the traditional wording, by virtue of which 'effective, proportionate and dissuasive sanctions' are to be prescribed, without calling into question the freedom for the Member States to choose between proceeding under administrative or criminal law,
- F. whereas the teleological approach which the Court of Justice has once again adopted will result in the Communitisation of criminal law in all the areas covered by Community law, disregarding the aforesaid provisions of the Treaties and of the national constitutions of the Member States, pursuant to which criminal law is enacted by the national parliaments; noting that in its report No 2829 of January 2006 the French National Assembly's Delegation for European Union Affairs even recommended that the French Government take appropriate action in response to this by revising the French Constitution,
- G. whereas this interpretation of the Treaties is clearly at odds with the position rightly defended before the Court by the Council and Member States, who are the only parties qualified to state what was, and remains, their common intent when they negotiated, signed and ratified the said Community Treaties,
- H. whereas, whilst the supranational institutions created under the Treaties are the product of national and revocable constitutional consent, the Member States and the various peoples of Europe represented in the European Parliament would appear to be the victims of a serious misinterpretation of the consent they gave, since a binding legal decision is compelling them to interpret the Treaties in a manner different to that which they intended,
- I. whereas this *contra legem* interpretation of the European Treaties merges the pillars into a single institutional framework laid down in a European Constitution that has been overwhelmingly rejected, and represents a judicial hijack which shows no regard for the principle of the separation of powers,
- J. whereas, in application of this judgment, the Community legislator may, in all matters constituting 'one of the essential objectives of the Community', impose directly applicable rules which take precedence over our national laws, including our constitutions, by virtue of the consistently unjust jurisprudence which the Court has been handing down since 1964,
- K. whereas, as shown by the ruling of 13 September 2005 itself and the official comments which followed it, it will be possible, in order to 'ensure that the rules laid down are fully effective', for the Communitisation of criminal law to extend indefinitely - not only to environmental policies, but also to immigration, competition, employment, social policy and transport, etc. - and to justify the continual absorption of national powers to the benefit of a bottomless, infinite Europe,
- L. whereas the Commission announced in its Communication of 23 November 2005 an initial list of nine new areas to which it intends to apply the judgment of 13 September 2005 by securing the annulment of nine draft framework decisions drawn up by the Council in the context of cooperation on justice and home affairs, in order to implement the Communitisation of criminal law in the following spheres: facilitation of unauthorised entry, transit and residence, marine pollution, counterfeiting of means of payment, money

laundering, computer crime, intellectual property and offences relating to the euro,

- M. whereas the scope of this Communitisation of law goes beyond the bounds not only of environmental law, but also of criminal law itself, with the judges in Luxembourg acting outside the Treaties and in the name of the same hegemonic principle of 'divine' order which led the European institutions to ignore the word 'no', as if on a veritable mission of judicial federalism,
- N. whereas in parallel to this Communitisation of criminal law through jurisprudence, the Commission, without any mandate or any basis under the Treaties, had already begun work on a draft 'European Civil Code', which is being prepared by something called the 'Von Bar' group and is funded to the tune of EUR 4 400 000 under the Cordis programme; whereas, wherever it would doubtless make sense to establish an indicative reference framework to facilitate the comparison of national laws (along the lines of the 'restatements' used in the USA), preparations are instead being made under this unification project to do away with bodies of national civil law in areas as diverse as contracts, liability, the family, legal guarantees, etc.,
- O. whereas this insidious approach and the super-State it is attempting to bring forth is the very thing which our citizens no longer want and which France and the Netherlands have overwhelmingly condemned, under the benevolent eye of the peoples denied a referendum, thereby, pursuant to the Vienna Convention of 23 May 1969, rendering null and void the Treaty establishing a Constitution for Europe,
1. Notes that the ruling handed down by the Court of Justice on 13 September 2005 in which it found against the Council and Member States in Case C-176/03 goes beyond the provisions of the Treaties and thus seriously undermines the principles of state consent and the sovereignty of peoples;
  2. Calls on the European Council of heads of state and government to meet in extraordinary session to frame and adopt a decision stipulating that, in the event of conflicting interpretations of the Treaties, the Council's interpretation shall obligatorily take precedence in law and in fact;
  3. Instructs its President to forward this resolution to the Presidency of the European Council.