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ITALIAN LEGAL FRAMEWORK

by Federico Casolari

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1. Treaties

On 1 April 2001 the first conventions between European Community and third Countries on the single currency entered into force. The agreements in question, as already mentioned[1], are the Monetary Agreement between the Italian Republic (I.R.), on behalf of the European Community, and the Republic of San Marino (29 November 2000)[2], and the Monetary Agreement between I.R., on behalf of the European Community, and the Vatican City (29 December 2000)[3].
In fact, as provided by Article 11, par. 1 and Article 12, par. 1 respectively of the above cited conventions, in March 2001, it was achieved the exchange of notifications concerning the completion of the ratification, conclusion or adoption procedures.
Furthermore, the third Countries involved granted legal status to euro banknotes and coins (Articles 1, par. 2), defining the coinage and notifing the artistic features of the national side (Articles 3, paragraphes 2 and 3); they have already exercised the right to use euro as official currency (Articles 1, par. 1).
In particular, the Republic of San Marino enacted a single legal instrument, the Decree of 24 April 2001, whilst the Vatican State passed two legal instruments, the Monetary Law No. CCLVII of 26 July 2001[4] and the Order No. CCCLXX of 18 December 2001[5] concerning the features of the national faces of euro coins for the date 2002.

2. National Law. Changes in the Legal Framework

Since the key legal adaptations have been already enacted during the years 1997-1999, most of the legal amendments on the change over passed during the relevant period regarded adjustments of provisions containing Lira amounts or Lira references. In spite of this, it is possible to point out some significative changes in the previous legal framework. These will be considered in the following.

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* Under the supervision of Professor Natalino Ronzitti, scientific advisor, Istituto Affari Internazionali (IAI) – Rome.

[1] See Italian Report, in Euro Spectator: Implementing Euro 2000.
For a comment about these agreements and the relevant legal base, *i.e.* article 111, par. 3 of the EC Treaty, refer to Zilioli C. and Selmayr M. (eds.), *The Law of the Central Bank*, Oxford – Portland Oregon, 2001, p. 218 et seq.; Malatesta A., *Commento articolo 111 TCE*, in Pocar F. (ed.), *Commentario breve ai trattati delle Comunità e dell'Unione europea*, Padova, 2001, pp. 534-539. Furthermore, one has to note that on 26 December 2001 the Monetary Agreement between the Government of the French Republic, on behalf of the European Community, and the Government of His Serene Highness the Prince of Monaco, entered into force. The Agreement is published in the Official Journal of the European Communities (OJEC) L 142 of 31 May 2002, p. 59 et seq.

[2] Published in OJEC C 209 of 27 July 2001, p. 1 et seq.

[3] Published in OJEC C 299 of 25 October 2001, p. 1 et seq.

[4] Published in Acta Apostolicæ Sedis (AAS), Vol. No. LXXII, No. 12 of 26 July 2001.

[5] Published in AAS, Vol. No. LXXII, No. 25 of 18 December 2001.

2.1. Legislative Decree No. 68 of 19 March 2001[6]

Within the general reorganization of the Public Administration, the Legislative Decree 68/2001 aimed at enacting a reform of the *Guardia di Finanza (Italian financial police)*, established with Law No. 189 of 23 April 1959[7], through a comprehensive restyling of its operative and administrative structure. To that end, it has firtsly been established that *Guardia di Finanza* shall perform the duties of economic and financial police in defence to Community, national, regional, and local Authorities' budget (Article 2, par. 1). That being stated, the legislator defined the fields within which this police exercises preventive, investigative and repressive activities (Article 2, par. 2). Among the situations contemplated by the Decree, one has to underline the reference to violations concerning currencies, securities, national, european and foreign values and means of payment (Article 2, par. 2 (h)).
This legislative instrument is only the first of an extensive reform passed during the relevant period in order to defend the single currency from the general offences of counterfeiting and altering.

2.2. Law Decree No. 350 of 25 September 2001[8] *converted into Law No. 409 of 23 November 2001*[9]

With the Law Decree No. 350/2001, the Italian Republic enforced some urgent and necessary measures in view of the change over of 1 January 2002.
According to the Article 77, par. 2 of the Italian Constitution, the Government issues a Law Decree having the force of the Law only in exceptional cases of necessity and urgency. Furthermore, the Government shall on the same day submit it for conversion into Law to the Parliament. In fact, a Law Decree shall be converted into Law by national Parliament within 60 days of its publication; in the contrary case, it shall lose effect as of the date of the issue.
First of all, the Law Decree No. 350/2001 aimed at allowing the credit Institutions and the citizens a soft transition to the new currency.
At Article 1 the Decree enforced the Recommendation of the Commission of 11 October 2000 on measures to facilitate the preparation of economic operators for the change over to the euro[10].
In particular, according to Article 3, par. 1 of the Recommendation, it has been given to the economic operators and credit Institutions (including Poste Italiane s.p.a.) the right to change over the accounts from the national unit to the euro as from the entry into force of the Decree (*i.e.* 26 November 2001), unless the customers, within 15 days from the publication of an informative note which the operators shall issue in the Italian Official Gazette, expressly request otherwise. In spite of this, the Decree safeguarded the possibility to realize transactions in Lira up to 31 December 2001. Obviously, the provisions of Council Regulation 1103/97 of 17 June 1997[11] concerning the rounding of

[6] Published in the Italian Official Gazette of 26 March 2001, No. 71.
[7] Published in the Italian Official Gazette of 24 April 1959, No. 98.
[8] Published in the Italian Official Gazette of 26 September 2001, No. 224.
[9] Published in the Italian Official Gazette of 24 November 2001, No. 274.
[10] Published in OJEC C 303 of 24 October 2000, pp. 6-7.
[11] Council Regulation (EC) No. 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro, OJEC L 162 of 19 June 1997, p. 1 et seq.

the monetary amounts were also enforceable to cheques and other means of payment issued in Lira.
With regard to cheques and other transfer forms issued in Lira after 1 January 2002, the above mentioned Article does not recognize the configuration of a valid instruments of credit. Nevertheless, according to the provisions of the Italian Civil Code (Article 1988), the credit instruments issued in Lira are act of acknowledgement of debt.
It was furthermore excluded the possibility, as from the so-called «big-bang», to give credit and charge orders in Lira to banks.

Article 2 of the Italian Decree established an extraordinary closing days calendar of bank payments, of *Banca d'Italia (National Central Bank)*, provincial and central State Treasury and *Cassa depositi e prestiti (Fund of deposits and loans)*[12]. Particularly, in order to facilitate and complete the change over of accounts, 29 December was declared suspension day of real time payment of Poste Italiane s.p.a. and 31 December closing day of bank payments. Furthermore, the Article provided for a series of derogations in front of the normal dates of expiration concerning VAT payment on account, State Treasury financial year, customs duties and the payment of salary and year-end bonus to State employees.

Article 3 established the duty to issue in advance in the Italian Official Gazette the closing days calendar of BIREL, the national Real-time gross settlement system, which is part of TARGET (Trans-european Automated Real-time Gross settlement Express Transfer system), if working days are involved. It also provided for the automatic extension of terms of obligations to the nearby working day[13].

Finally, the legislative act established within the national fiscal framework the so-called *"scudo fiscale" (fiscal shield).* This instrument, established under Heading III (Articles 11-21), authorized the repatriation or regularization of assets detained abroad by persons or non commercial and non-stock corporations in transgression of national monetary and tax system[14]. According to the governmental report on the Italian Decree, the *ratio* results from the new European fiscal geography after the change over of 1 January 2002 and the involved necessity to reach at national level a deeper economic and financial stability[15].

Articles 4-8 of the Decree No. 350/2001, grouped together in a Section laying down *"Disposizioni contro la falsificazione dell'euro" (Dispositions against the*

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[12] Established in pre-unification Italy in 1850, following the example of France, this Institution carries out duties which can be grouped together in three areas: - receiving deposits from public bodies and, in those cases regulated by law, from private parties as well; - granting loans to the State, and financing and supporting the investments of public bodies; - managing resources on behalf of the State or other Public Administrations. See Law No. 197 of 13 March 1983 (Italian Official Gazette of 19 May 1983, No. 136); Law No. 68 of 19 March 1993 (Italian Official Gazette of 20 March 1993, No. 66) and Legislative Decree No. 284 of 30 July 1999 (Italian Official Gazette of 17 August 1999, No. 192).

[13] According to the long-term calendar for TARGET (as a whole) closing days, fixed on 14 December 2000 by Governing Council of European Central Bank to avoid uncertainties and problems arising from different national TARGET operating days, *Banca d'Italia* Governor issued an Act dated 18 October 2001 and published in the Italian Official Gazette of 30 October 2001, No. 253.

[14] These articles were amended by Law Decree of 22 February 2002, No. 12, published in the Italian Official Gazette of 23 February 2002, No. 46 and converted into Law of 23 April 2002, No. 73 (Italian Official Gazette of 24 April 2002, No. 96).

[15] Refer to Presidency conclusions, Santa Maria de Feira European Council, 19 and 20 June 2000, par. 42 and Annex No. IV; OECD's Report on ways to improve international co-operation with respect to the exchange of information in the possession of banks and other financial Institutions for tax purposes. Committee on Fiscal Affair, *Improving Access to Bank Information for Tax Purposes*, April 2000.

counterfeiting of the euro), rendered Italian criminal law consistent with the euro *acquis* in criminal matter[16].

In particular, Article 12 of the EC Regulation 974/98[17] established that participating Member States shall *"ensure adequate sanctions against counterfeiting and falsification of euro banknotes and coins"*. Under this provision, EU legislator issued also the framework Decision 2000/383/JHA[18] on increasing protection against counterfeiting in connection with the introduction of the euro, the Decision 2001/887/JHA[19] on the protection of the euro against falsification and, finally, the Regulations 1338/2001 and 1339/2001[20].

Articles 4-6 of the Decree enforced both Article 3 and Article 5(a) of the Council framework Decision of 29 May 2000.

Article 3 established the relevant offences which shall be punished by all the Member States' criminal legislations in order to protect the euro in an appropriate and similar way. They are: falsification (Article 3, par. 1 (a)); fraudulent uttering (Article 3, par. 1 (b)); import, export, receiving or obtaining of counterfeit currency (Article 3, par. 1 (c)); fraudulent making, receiving, obtaining or possession of instruments, articles, computer programs, other means adapted for the counterfeiting or altering (Article 3, par. 1 (d)); fraudulent making, receiving, obtaining or possession of holograms or other components of currency which serve to protect against counterfeiting (Article 3, par. 1 (d)).

On the other hand, Article 5(a), in order to defend the credibility of the new currency and thereby avoid serious economic consequences, established that also the offences on euro banknotes and coins committed before 1 January (*i.e.* relating to currency without legal tender) were punishable by dissuasive criminal penalty.

Under these provisions, according to Article 4 of the Italian Decree, it has been enacted a temporary rule, which applied, *expressis verbis*, only to the offences committed before 1 January 2002. The provision, which also applies to the official stamps in euro, extended therefore the Penal Code's Articles on the offences against public faith[21], to the violations relating to euro banknotes and coins not yet in circulation.

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[16] With regard to this, see also the inquiry of the Senate 6th Committee (Finance and Treasury) by the terms of the Article 48 of the Regulation on the conducts of laundering vis-à-vis the cash change over.

[17] Council Regulation (EC) No. 974/98 of 3 May 1998 on the introduction of the euro, in OJEC L 139 of 11 May 1998, p. 1 et seq.

[18] The framework Decision was published in the OJEC L 140 of 14 June 2000, p. 1 et seq. Its *ratio* was the completion of the International Convention of 20 April 1929 for the Suppression of Counterfeiting Currency, signed in Geneva and approved by Italian Republic with Royal Decree of 20 June 1935, No. 1518, published in the Italian Official Gazette of 24 August 1935, No. 197.

This framework Decision, adopted within the third EU pillar, has been amended by Council framework Decision of 6 December 2001, in OJEC L 329 of 14 December 2001, p. 3. This act inserted a further Article (9-*bis*) relating to the recognition of previous convictions.

[19] OJEC L 329 of 14 December 2001, p. 1 et seq.

[20] Council Regulation (EC) No. 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting, in OJEC L 181 of 4 July 2001, pp. 6-10; Council Regulation (EC) No. 1339/2001 of 28 June 2001 extending the effects of Regulation (EC) No. 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting to those Member States which have not adopted the euro as their single currency, in OJEC L 181 of 4 July 2001, p. 11. See also the 2329th Council meeting Ecofin, Brussels, 12 February 2001.

[21] Namely Articles 453, 454, 455, 456, 457, 458, 459, 460, 461 and 464 of Italian Penal Code. Under these provisions are included all the above mentioned conducts. For an authorative analysis of the Articles and the relevant offences, refer to Antolisei F., *Manuale di diritto penale*, Parte Speciale, Vol. No. II, Milano, 1997, 12th ed., p. 81 et seq.

As regards the criminal penalty, the minor gravity of these offences, justifies a reduction of sentence (1/3), unless the offender charged with falsification, puts banknotes, coins or official stamps into circulation after 1 January 2002.
In fact, it should be noted that the Italian criminal law on offences of falsehood prevents from convicting the accused charged with uttering if he has already been found guilty of counterfeiting[22].
It follows that, failing the provision of the Article 4, the accused charged with both counterfeiting and uttering of euro currency should receive only a reduced penalty, even if the conduct exactly corresponds to the one whose counterfeits and spreads euro currency as from 1 January 2002.
Due to their transitional nature, all these provisions amended the Legislative Decree of 24 June 1998 No. 213[23].
According to Articles 8 and 9 of the above mentioned framework Decision, Article 4 of the Decree 350/2001 also provided for the liability, and related sanctions, of legal persons for the offences on the euro counterfeiting.
On this point, it should be noted that, before enacting the Legislative Decree of 8 June 2001, No. 231[24], corporate crimes were not punishable conducts. The main obstacle was represented by the so-called *"teoria della colpevolezza" (theory of criminal responsability)*. In fact, according to the Article 27, par. 1 of the Constitution, criminal responsability is personal . Therefore, assuming the necessity of the volitive element, legal persons were not held liable for criminal offences [25].
Nevertheless, with the Legislative Decree, the legislator provided for an "administrative liability" of legal persons, companies and societies without legal status for the criminal offences on euro currency[26].
Article 5 of the Italian Decree amended Article 461 of the Penal Code on making or possession of watermarks or instruments intended for the counterfeiting of coins, banknotes and official stamps. In particular it provided, as punishable conduct, also for the making or possession of holograms or other components of currency which serve to protect against counterfeiting[27].

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[22] See Article 453, No. 3 and Article 455 of Penal Code.
Accordingly, with judgement of 13 February 1964, the *Corte di Cassazione (Italian Supreme Court)* confirmed that the enforcement of Article 453, No. 3 requires the distinction between the author and the counterfeiter or his accomplice. Referring to these two, they shall be found guilty according to Article 453, No. 1, while not punishable for spending and uttering of counterfeit currency. See *Giurisprudenza italiana*, 1965, Vol. No. II, p. 188 et seq. See also Cassazione, judgement of 21 September 1988, published in *Giustizia penale* 1989, Vol. No. II, p. 361 et seq.
[23] Dispositions concerning the introduction of the EURO into the national system, according to Article 1, par. 1 of Law of 17 December 1997, No. 433, published in the Italian Official Gazette of 8 July 1998, No. 157. With regard to this Decree, see Italian Report, in Euro Spectator: Implementing the Euro 1999, EUI Working Paper in Law No. 2000/7.
[24] Published in the Italian Official Gazette of 19 June 2001, No. 231.
[25] For further details about the debate, refer to Bricola, *Luci ed ombre nella prospettiva di una responsabilità penale degli enti nei paesi della CEE*, in Giurisprudenza Commerciale, 1979, p. 647 et seq.; Fiandaca G. & Musco E., *Diritto Penale Parte generale*, 4th ed., Bologna, 2001, pp. 143-150.
[26] For a comment on the nature of this liability, considered a special form of criminal liability, refer to Paliero Carlo E., *Il d.lgs. 8 giugno 2001, n. 231: da ora in poi, societas delinquere (et puniri) potest*, published in Corriere giuridico, No. 7/2001, pp. 845-848.
Besides, the same framework Decision did not impose the solution of the choice between criminal or administrative sanctions (Article 9, par. 1).
[27] Furthermore, also Law of 23 November 2001, No. 409, amended the Article, punishing the making or possession of informatic programs which serve to counterfeit currency, official stamps or watermarks.

Obviously, this conduct was also punishable with reference to banknotes, coins and official stamps in euro counterfeit before 1 January 2002.

The reform of the criminal offences on the single currency was also the *ratio* of Article 6 of the Decree 350/2001. In fact, in connection with the liability of legal persons, the legislator amended the above cited Legislative Decree 231/2001, introducing a new Article (25-*bis*) on the sanctions concerning the general offences of counterfeiting of currency, credits instruments and official stamps.

Articles 7 and 8 of the Decree 350/2001 enforced the provisions of Council Regulation 1338/2001 on an integrated system of co-operation, mutual assistance, and exchange of technical and statistical data between national competent Authorities and EU Institutions in order to protect the single currency against the counterfeiting and a «jeopardisation» of its credibility.

Under these provisions, Italian legislator established the transmission of information relating to banknotes, coins and the other means of payment from national Authorities to *Ministero dell'economia e delle finanze (Economy and Finance Department)*, according to the procedures fixed in concert with *Ministero dell'interno (Department of the Interior)*.

According to Article 6 of the EC Regulation, Article 8, par. 1 of the Italian Decree established the obligations of credit Institutions and any other Institution engaged in the sorting and distribution to the public of notes and coins. They shall be obliged to withdraw from circulation all euro notes and coins which they know or have sufficient reason to believe to be counterfeit. The notes and coins, moreover, shall be immediately forwarded to national competent Authorities, *i.e. Banca d'Italia* and *Istituto Poligrafico Zecca dello Stato - IPZS (Italian mint)* respectively.

In this regard, it is necessary to say that the Italian central office for protection against counterfeiting was located with the *Ministero dell'economia e finanze*. In fact, enforcing the Regulation 1338/2001 and with a view to involve all the branches of the Public Administration at both central and local levels, in 2001 *"Ufficio centrale di analisi e monitoraggio della falsificazione monetaria e degli altri mezzi di pagamento diversi dal contante" (National Office for analysis and counterfeiting monitoring of currency and other means of payments)*[28] was established. The office is divided into two branches: an economic-financial area with the task to manage technical and statistical data, and an area in charge with the task of establishing a co-operation with the other involved Authorities.

Article 8, par. 3 of the Italian Decree provided, according to Article 6, par. 2 of the EC Regulation 1338/2001, for the sanctions against the credit Institutions which fail to discharge their obligations as established by paragraph 1. In particular, it was established the possibility of imposing a fine from 3.000,-- to 15.000,-- euro. Due to the peculiarity of the matter, the competence to impose the fine was assigned to the Governor of the *Banca d'Italia*, with reference to the banknotes, and to the *Ministro dell'economia e delle finanze (Secretary of Economy and Finance)*, with reference to the coins, respectively.

Law No. 409/2001 (the conversion Law of the Decree 350/2001) provided for the permission to the official retailers, during the period of dual currency[29], to replace the

[28] This office was established by the ministerial Decree of 15 May 2001, published in the Italian Official Gazette of 26 May 2001, No. 121.

[29] See Article 155, par. 1 of the Law of 23 December 2000, No. 388 (finance Law for 2001) published in the Italian Official Gazette of 29 December 2000, No. 219.

stamps (included the bills) not denominated in the euro (Article 1-*bis*). The provision was also enforceable with regard to stamps denominated at the same time in Lira and in the euro and to postage stamps as well[30].

2.3 Law No. 431 of 14 December 2001[31]

In order to facilitate the cash change over, Italy, Spain, France, Belgium and Luxembourg reached an agreement on the obliteration of banknotes denominated in the former national currencies. This procedure was established within the Italian legal framework on the occasion of the conversion of Law Decree 36/2001 laying down urgent measures against international terrorism, with Law No. 431/2001.
In fact, its Article 2-*bis* established obliteration's conditions and limits which the credit Institutions and the Poste Italiane s.p.a. should accomplish during the period of dual currency in order to realize the change over and obtain account with the National Central Bank. According to this provision, the national guidelines on obliteration were issued by the *Banca d'Italia* with a Governor's Act[32].

2.4. Decree of the President of the Republic No. 182 of 15 December 2001[33]

This act issued a new regulation on the cross-border credit transfers of State Administrations[34] (Article 1). Particularly, the State Treasury, in order to execute transfers denominated in euro throughout the EMU States, should issue payment order, solvent through TARGET system (Article 2). The payments denominated in other currency can be processed through the *Ufficio Italiano Cambi (Italian Foreign Exchange Office)*, according to the technical guidelines which this office shall issue under agreement with *Ministero dell'economia e delle finanze* (Article 3).

2.5. Measures of fiscal devolution

Following the enforcement of Article 28 of the Law No. 448 of 23 December 1998 (finance Law for 1999)[35], it was established the *Patto di stabilità interno (National Stability Pact - NSP)*. This instrument aims at involving all the Public Administrations at local level in the pursuit of the Community budgetary objectives. During 2001, the NSP, conceived as objective for budgetary balance of local Authorities, was amended. In particular, the legislator established limits to the primary current allocations and strengthened the existing sanctions. The Law Decree No. 347 of 18 September 2001 (converted with Law No. 405 of 16 November 2001)[36] established new provisions with

[30] According to paragraph No. 2 of the examined Article, the relevant procedures were established by the ministerial Decree of 23 January 2002 published in the Italian Official Gazette of 26 January 2002, No. 22.
[31] Published in the Italian Official Gazette of 14 December 2001, No. 290.
[32] This act (dated 21 December 2001) was published in the Italian Official Gazette of 29 December 2001, No. 301.
[33] Published in the Italian Official Gazette of 14 February 2002, No. 38.
[34] See on this subject the circular letter of the Ministero dell'economia e delle finanze, dated 30 November 2001, No. 4474, laying down guidelines on the cross-border payments.
[35] Published in the Italian Official Gazette of 29 December 1998, No. 302.
[36] Published in the Italian Official Gazette of 17 November 2001, No. 268.

reference to Regions that have been granted an ordinary statute (Article 1)[37], while Law No. 448 of 28 December 2001 (finance Law for 2002)[38] amended the set of rules relating to Provinces and Municipalities with more than 5.000 inhabitants[39].
These amendments will be enforced during 2002. In fact, according to Law No. 388 of 23 December 2000 (finance Law for 2001), the 2001 criteria[40] did not undergo any change.

Finally, on the second half of 2001, it was passed a constitutional reform of Title V, Part II of Italian fundamental Charter[41]. The constitutional Law No. 3 of 18 October 2001[42], laying down a federal reform of the State through the introduction of a new distribution of competences between the State and the Regions' legislative power (Article 117 of Constitution), established, among other things, the principle of financial autonomy with respect to revenues and expenditures of local Authorities (Article 119). According to the Article 11 of this Law, the Chambers shall change their respective Standing Orders in order to allow representatives from the Regions and the other local Authorities to take part in the proceedings of the Parliamentary Commission for regional affairs, whenever it shall discuss any bills that contain "fundamental principles" pertaining to the exercise of the financial autonomy.
However, this reform has to be completed with the adoption of a framework Law laying down common principles with regard to taxes imposition, budgetary framework and constraint and, obviously, solidaristic instruments.

2.6 Further provisions about the cash change over

On the occasion of the 2212th Council meeting Ecofin (8 November 1999), the EU Institution considered the possibility of frontloading coins to the general public[43], as from the second half of December 2001. Under the rule of subsidiarity, however, the decision on this point still lies with the Member State. That being stated, the *Ministero dell'economia e delle finanze* charged the *IPZS* to produce 30 million mini starter kits and 1,2 million starter kits. Every mini starter kit, intended for the general public, consisted of 53 coins (worth € 12.91), while the starter kit, intended for the retailers, consisted of 960 coins (worth € 315). The starting date for the distribution was 15 December 2001. The starter kits were given out in exchange for ITL 25.000 and ITL 610.000 respectively, without any fees. From the same day banks provided for distributing special sub-packaging of banknotes by the Italian Central Bank of € 5 per

[37] The amount of current expenditures, interest charges net, shall not exceed the correspondent figure referred to year 2000, raised by 4,5%.
[38] Published in the Italian Official Gazette of 29 December 2001, No. 301.
[39] According to this act, the balance shall be not less favourable than the 2000 result worsened by 2,5%, while the amount of current expenditure shall not exceed the correspondent figure referred to year 2000, raised by 6%.
See Article 24 of the finance Law for 2002 as amended by Article 3 of the Law Decree of 22 February 2002, No. 13 (Italian Official Gazette of 25 February 2002, No. 47), and the circular letter No. 11 of the *Ministero dell'economia e delle finanze*, dated 26 February 2002 (Italian Official Gazette of 30 March 2002, No. 13).
[40] *I.e.* balance not less favourable than the 1999 result worsened by 3%.
[41] For the first time an extensive constitutional amendment concerning the entire Part II of the Title V of the Constitution (Regions, Provinces and Municipalities) was approved through a popular referendum.
[42] Published in the Italian Official Gazette of 24 October 2001, No. 248.
[43] See Introduction of euro notes and coins – Common Statement, par. 4.

25 banknotes. The retailers were obliged not to put them into circulation before 1 January 2002.

The banks will continue to change Lira for euros, without expenses, until 30 June 2002.

Furthermore, in order to keep the citizens relatively informed about the change over, the *Presidente del Consiglio (Italian Prime Minister)* enacted a Decree[44] concerning a national extraordinary press campaign on the introduction of the euro.

3. National Law from the EC Perspective

Considering the interactions between EC law and Italian legislation passed during the examined period, one may point out two main issues, as possible source of contention: the enforcement of the principle of continuity of the contracts, which has been already examined[45], on one side, and the interactions between national criminal law and "european criminal law", on the other side.
These issues will be discussed in the following.

3.1. The principle of continuity with reference to the conversion of companies' capital

The principle of continuity of the contracts establishes that *"the introduction of the euro shall not have the effect of altering any term of a legal instrument or of discharging or excusing performance under any legal instrument, nor give a party the right unilaterally to alter or terminate such an instrument"*[46]. This, as natural completion of the principle of neutrality of the transition to the euro, aims at avoiding that the introduction of the new currency prevents the contract (and the other legal instruments as well) from continuing or requires changes of the content of the obligations.
Now, according to Italian scholars, the principle of continuity can be considered:

- an immediate applicable rule; *or*
- an interpretative rule of EC legislator on the change over, having due regard to the Member States' legal framework; *or*
- a general rule except for some, limited derogations[47].

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[44] Decree of the Prime Minister of 7 September 2001, published in the Italian Official Gazette of 11 October 2001, No. 237.

[45] See Italian Report, in Euro Spectator: Implementing the Euro 1999, EUI Working Paper in Law, No. 2000/7.

[46] See Article 3, Council Regulation (EC) No. 1103 of 17 June 1997.

[47] For further considerations about the national debate, which does not fail to reveal the indefiniteness of this principle, refer to Consiglio Nazionale del Notariato *(National Notary Council), Appunti in tema di euro: questioni minori di interesse notarile*, Report. No. 3589, 16 October 2001.
Nevertheless, it should be noted that, from the EC perspective, this principle is *"a generally accepted principle of law"* (recital No. 7 of EC Regulation 1103/1997). Notwithstanding this statement, the concern about the significance of the principle of continuity does not regard only Italian legislation, but represents a *leitmotiv* of all involved european Countries. Furthermore, this debate is closely linked with the general issue concerning the harmonization of european contractual law. With regard to this, see Thévenoz L. & Fontaine M. (eds.), *International Symposium. The euro and non participating Countries*, Zurich, 2000.

As for the content of the principle, the main area of concern regards the risk of termination of the contract because of the impracticability of the performance by having to comply with the replacement order[48].
Particularly, with regard to the company law, the question was whether the change over prevented the company's contract from continuing because of the impossibility to realize its object, unless the capital has been converted into euros before 1 January 2002.
During the relevant period the above mentioned risk was definitively excluded by the issuing of two legal instruments on the rule of conversion of capital and par value of company's share: *i.e.* Article 9, par. 2 of Law of 18 October 2001, No. 383[49] and Article 8-*quater* of Law of 31 December 2001, No. 463[50].
A distinction has to be made according to companies' typology.

As for partnerships *(società di persone)*, in reality, the enforcement of the general mechanism of automatic conversion (according to the well-known exchange rate) provided at Community level with reference to all the legal instruments, does not represent a concern[51]. As a proof of that, Article 9, par. 2 of Law 383/2001 enacting "Initial economic policy measures" (the so-called Tremonti-*bis*), established that, with regard to the partnerships, the conversion of contributions denominated in Lira in the deed of partnership is achieved through a merely internal act (*i.e* a resolution of the partners).
Likewise, one could settle the question relating to the co-operatives *(società cooperative)*.

As for limited liability companies *(società a responsabilità limitata)*, the Article 8-*quater* stated that the Ltd companies established before 1 January 2002, shall convert their capital according to the Civil Code[52], on or before 31 December 2004.
It follows that, in the meanwhile, they will be able to operate although the capital is denominated in Lira. Nevertheless, for the scholars, it is clear that the companies will be able to adopt resolutions of increase or reduction of the capital only when the capital will be converted into euros.

As for joint-stock companies *(società per azioni)*, the examined concern should be considered from a different perspective. In fact, assuming that the dissolution does not take place[53], the enforcement of the automatic conversion's rule refers to the capital as restraint on availability of company's assets (the so-called external guarantee of capital), but is not able to adequate also the par value of the shares.

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[48] See Italian Report, in Euro Spectator: Implementing the Euro 1999, EUI Working Paper in Law, No. 2000/7 and Philippe D., *Changement de circostances et bouleversement de l'économie contractuelle, Bruxelles*, 1986.
[49] Published in the Italian Official Gazette of 24 October 2001, No. 248.
[50] Published in the Italian Official Gazette of 9 January 2002, No. 7.
[51] See on this point, Stella Richter M., *Voce Euro. II) Diritto commerciale*, Enciclopedia Giuridica Treccani, p. 2 and ID., *La conversione in euro del capitale di società a responsabilità limitata e società di persone*, in Il Notaro, 2000, p. 78 et seq. *Contra*, Riccardelli N., *L'euro e le quote di società di persone*, Documents of Sassari Meeting of 12 May 2001, p. 37 et seq.
[52] It referred to Article 2474, paragraphes 1, 2 and 3 of Civil Code, as amended by the Legislative Decree 213/98. Moreover, by the terms of Article 9, par. 1(b) of Law 383/2001, the Ltd companies have authority to redenominate their capital rounding up or down to the nearest cent according to Article 17, paragraphes 1-5 of Legislative Decree 213/98, while the previous legal framework provided only for a denomination of the shares at a *ratio* 1:1,1 share – 1 €, or its multiples.
[53] See Stella Richter M., *Sulla mancata conversione del capitale sociale in euro*, in Rivista del Notariato, 1999, p. 1269 et seq.

Furthermore, whereas the disposition of voting rights and the property rights should be unaffected by the transition to the single currency, a decision on the redenomination of shares cannot be avoided. In this regard, the provisions by the terms of Article 17 of Legislative Decree 213/98[54], which establish the procedure of their redenomination, differentiate from the mechanism of automatic conversion enacted by EU legislator[55].
It follows that, from a teleological perspective, Italian legislator imposed a hierarchy of values, according to which the protection of partners position vis-à-vis the exercise of rights in the company has the priority over the facilitation of conversion's resolution and the capital maintenance as well.

3.2. The principle of continuity with reference to the contracts drawn up after 1 January 2002 providing performances denominated in Lira, rather than in the euro

According to certain scholars[56], the question concerning the validity of a contract drawn up, in spite of the end of transitional period, providing performances denominated in Lira, may find a definitive solution by the terms of Article 1, par. 3 of Law Decree 350/2001. As previously seen[57], this Article established that from 1 January 2002, cheques and other credit instruments shall be issued only in euro. In the opinion of these scholars, if the law does not recognize the possibility of issuing credit instruments in Lira after the change over, the same principle should apply to the contracts, as other example of legal instrument.
In reality, a distinction has to be made. In fact, considering Article 1, par. 3 as general rule of national contractual law on the improper use of the former currency, seems to be inconsistent with both the purposes of the Italian legislator and the EU law (*i.e.* the Article 3 of the Regulation 1103/1997).
In particular, one has to note that Italian law, contrary to the contractual law's provisions, prevents the credit instrument from making reference to external sources. It follows that its content (the obligation) shall be determined only by the instrument itself. This provision aims at facilitating the circulation of these instruments and the involved obligations as well[58].
According to that, the credit instrument issued in Lira after the 1 January 2002 does not seem to be able to fulfil this objective, because the instrument contains an obligation denominated in a currency without legal tender: in this case Italian Law does not recognize the nature of credit instrument, but recognizes the validity as legal instrument (*i.e.* acknowledgement of debt).

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[54] Article 17 provided for a par value's conversion rounding to the cent according to Article 5 of Council Regulation 1103/1997, except for the special rule by the terms of its paragraph 6, according to which, it is possibile a reduction on capital of 5% at the most.
[55] About this subject, see Villa N., *Euro. Aspetti contabili e fiscali della moneta unica europea*, Napoli, 2001, p. 77 et seq.; Consiglio Nazionale del Notariato *(National Notary Council), Ancora sulla conversione in euro del capitale sociale a seguito delle leggi 448/2001 e 463/2001*, Report. No. 3735, p. 4.
[56] Consiglio Nazionale del Notariato *(National Notary Council), Appunti in tema di euro: questioni minori di interesse notarile*, Report. No. 3589, 16 October 2001.
[57] *Supra*, p. 3.
[58] See, Chiomenti F., *Il titolo di credito, fattispecie e disciplina*, Milano, 1977, p. 3 et seq.; Pellizzi Giovanni L., *Principi di diritto cartolare*, Bologna, 1967, p. 22 et seq. and ID, *I titoli di credito*, Milano, 1980.

3.3. The principle of continuity with reference to the use of official stamps denominated in Lira after the 1 January 2002

As previously seen[59], the official stamps denominated in Lira were the object of a special rule providing for their replacement with stamps denominated in euro. This notwithstanding, on the occasion of the change over, the question concerning the use by the taxpayers of stamps denominated in Lira, after the 1 January 2002, made itself conspicuous.
With circular letter of 21 December 2001, No. 106, the *Agenzia delle Entrate (Italian Office of the public revenue)* established that stamps denomitated in Lira were valid up to 28 February 2002 (*i.e.* the end of the period of dual currency). Nevertheless, this provision was not consistent with the relevant EC rules, particularly the Regulation 1103/97, by the terms of which, every legal instrument denominated in the former national currency shall be not affected by the introduction of the new currency. Since the official stamps are legal instruments, according to the definition of the EC Regulation[60], it follows that they shall be unaffected by the change over. According to this, the *Agenzia delle Entrate* has modified the previous trend with the circular letter of 26 February 2002, No. 20/E, providing for a system of exhaustion, which involves Poste Italiane s.p.a. (primary retailer), through the transfer to official retailers (secondary retailer) and from them to the consumers. Obviously, all the assignments must be accomplished in euro[61].

3.4. Fight against the counterfeiting of banknotes and coins in euro

The EU criminal law on counterfeiting of the single currency (*supra*, par. 2.2) forms part of the *acquis* adopted under the third pillar of the European Union.
Therefore, one may point out some issues as possible source of contention. In particular, the concern focuses on the interactions between national and EU criminal law[62].
From this perspective, it is not casual the use, as act "par excellence" of approximation of Member States' laws and regulations, of the framework Decision (Article 34, par. 2(b) of the EU Treaty), which replaced together with the Decision, the previous instrument of the joint action. In fact, as provided by the Treaty, the framework Decision, along the lines of the Directive, is binding on the Member States as to the result to be achieved, but leaves the choice of forms and methods to the national Authorities; furthermore, in order to avoid the recognition by the case law of the Court of Justice of its direct effect (in a similar way as regards the Directives), it has been stated that this act cannot have any direct applicability.
Now, referring to the measures taken by Italian Republic to comply with the Council framework Decision of 29 May 2000, it is important to underline that, according to the

[59] *Supra*, p. 6.
[60] Article 1 of the EC Regulation 1103/1997 established that "legal instruments" shall also mean *"payment instruments other than banknotes and coins"*.
[61] The same solution has been already provided by *Ministero delle comunicazioni (Communications Department)* which, with note SG/1234 dated 4 May 2001, communicated to *Segretariato Generale of Comitato per l'euro (General Secretariat of Euro Committee)* that postage stamps denominated in Lira shall keep validity also after 1 January 2002.
[62] See Grasso G. (ed.), *Prospettive di un diritto penale europeo*, Milano, 1998; Magliaro A., *Limiti all'unificazione del diritto penale europeo*, in Rivista trimestrale di diritto penale dell'economia, 1994, p. 200 et seq.; Sieber, *Unificazione europea e diritto penale*, *ivi*, 1991, p. 982 et seq.

report from the Commission about the implementation of this framework Decision[63], it would seem that Italy implemented adequately the EU provisions, although the State has not transmitted on time to EU Institutions all the relevant texts transposing into its national law the obligations imposed under the framework Decision (see Articles 5(a) and 11)[64].

Nevertheless, the Commission pointed out some interesting considerations.

First of all, it should be noted that the general concept of counterfeiting of currency described in the framework Decision is object of a specific distinction in the Italian legislation between counterfeiting (Article 453 Penal Code), on the one hand, and altering of currency (Article 454 Penal Code), on the other hand. It is yet not an useless redundance of national legislator, aiming rather at enforcing the protection of legal rights.

Secondly, Italian legislation did not enforce the provisions on the conducts of import, export and transport under Article 3, par. 1(c) of the framework Decision; the criminal legislation in force defines the relevant punishable conducts in more general terms[65].

Thirdly, the Commission points out the circumstance that Italian criminal law does not provide for any provisions concerning the general offences provided by Article 5(b) of the framework Decisions, *i.e.* the punishable conducts concerning banknotes and coins which are not yet issued but are designated for circulation, and are of a currency which is legal tender.

Finally, the EU Institution underlines that Italy appears not to have transposed the obligations under Article 4 of the framework Decision. It has to do with the necessity to define, as criminal punishable offences, the conducts *"with respect to banknotes or coins being manufactured or having been manufactured by use of legal facilities or materials in violation of the rights or the conditions under which the competent Authorities may issue currency, without these authorities' agreement"*. The *ratio* of this provision was determined with reference to the practice developed by many Member States, according to which private persons are entrusted with the production of currency. From this perspective, one has to note that in Italy the production of coins and banknotes by the *IPZS* and the *Banca d'Italia* respectively, dissuaded the legislator from taking the necessary measures in order to ensure that the conducts by the terms of Article 4 are punishable. In fact, it was considered inappropriate the definition by criminal law of the interactions between national mint and the international Institutions in charge with the task to issue the relevant guidelines.

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[63] *Id est* report from the Commission based on Article 11 of the Council's framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro, COM (2001) 771 final, 13 December 2001. It is important to underline that it was the first time the implementation of a framework Decision was evaluated.

[64] Article 11 of the framework Decision obliged the Member States to take the necessary measures to comply with its provisions not later than 29 May 2001, except for Article 5(a) which should have already been complied with by 31 December 2000. By the same dates, the States should have transmitted to the General Secretariat of the Council, the Commission and the ECB the text of the provisions transposing into their national law the obligations of the framework Decision. Italy notified the Commission of the measures taken on 23 October 2001.

[65] Italian criminal law (Articles 453(3), 455 and 459 of Italian Penal Code) only provides for the introduction into the national territory of counterfeit currency or official stamps, without distinguishing between their import, export or transport.

Moreover, the offences based on the conducts of State employees are yet punishable by the terms of the so-called «statuto penale della pubblica amministrazione» *(criminal charter of the Public Administration)*.

As for Article 7, par. 3 of the framework Decision[66], its accomplishment was considered by the Italian legislator in contrast with two constitutional principles, *i.e.* the principle of the natural judge (Article 25, par. 1)[67] and the compulsion of criminal prosecution (Article 112)[68].

Nevertheless, one has to note that the concern relating to the conflicts of jurisdiction still lies. In fact, according to Article 7 of Penal Code, Italian State may prosecute the citizens or the strangers which commit offences abroad relating to currency. It follows that all the offences on euro committed within the EU Area might determine a jurisdictional conflict[69].

4. The Application of the Law

During the relevant period, issues on the application of the legislative acts passed to render the Italian legal system consistent with the single currency, are not known to the author.

5. Institutional Aspects

Further elements related to the practical implementation of the obligation of indipendence of the *Banca d'Italia* vis-à-vis the Government and the legislator or problems between the national and Community responsibilities and functions entrusted to the NCB perceived during the relevant period, are not known to the author[70]. Nevertheless, it seems right to note that, as regards the recent debate on the reorganisation of the supervisory structures in some euro Countries, which has led the ECB Governing Council to assess the involvement of NCBs arguing in favour of its maintaining and enforcing[71], Italian NCB extended its competence by the terms of the Article 146 of the Banking Single Act[72], according to which *Banca d'Italia* exercises a

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[66] The paragraph reads as follows: "where more than one Member State has jurisdiction and has the possibility of viable prosecution of an offence based on the same facts, the Member States involved shall cooperate in deciding which […] shall prosecute the offender or offenders with a view to centralising the prosecution in a single Member State where possible".

[67] "No case shall be removed from the court that must hear it, as pre-ordained by law".

[68] "The criminal prosecutor shall have the duty to initiate criminal proceedings".

[69] With regard to the conflict of jurisdiction, see Pisani M., *Problemi della giurisdizione penale*, Padova, 1987, pp. 51-54.

[70] For more details about the relevant legal framework, refer to Italian Reports in Euro Spectator: Implementing the Euro, 1999, 2000.

[71] ECB Press release, 22 March 2001, http://www.ecb.int. It should be noted that, according to Article 3, par. 3 of the Protocol on the Statute of the European System of Central Banks (ESCB) and of the European Central Bank, the ESCB *"shall contribute to the smooth conduct of policies pursued by competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system"*.

[72] Legislative Decree of 1 September 1993, No. 385, published in the Italian Official Gazette of 1 September 1993, No. 385, as amended by Legislative Decree of 4 August 1999, No. 333 published in the Italian Official Gazette of 28 September 1999, No. 228. According to its Article 4, par. 2, NCB

general supervisory function on the payment means[73]. In fact, during the relevant period, were enacted the Legislative Decree of 23 January 2002, No. 10[74] on the electronic signatures, the Decree of the President of the Republic of 14 March 2001, No. 144[75] on the "Bancoposta" service, the ministerial Decree of 13 December 2001, No. 456[76] on the cross-border credit transfers, and, finally, the NCB's Regulation of 29 January 2002 relating to the enforcement of the Inter-banking Alarm Centre, according to the Legislative Decree of 30 December 1999, No. 507[77].

Furthermore, as regards the set of rules of *Banca d'Italia*, the Organisation Office intervened in order to adequate the provisions and all the forms which contained Lira references to the new currency. About 100 provisions out of 200 which constitute the NCB's *corpus juris* were interested therein[78]. Following a special report on the book-keeping aspects of the capital conversion into euros, the Superior Board established that the NCB's capital was fixed in € 156.000[79].

With regard to the "legal" relationship with the ECB, one has to note that *Banca d'Italia*, Counterfeiting Analysis Centre (CAC) by the terms of the Article 4, par. 1 of the EC Regulation 1338/2001[80], issued the guidelines on the withdrawal and transmission of notes in euro which it knows or has sufficient reason to believe to be counterfeit[81]. Furthermore, as was explained above[82], the Institution issued, according to the ECB's recommendations, the guidelines on the obliteration of banknotes denominated in Lira.

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establishes and publishes the principles and the guidelines on supervision. NCB's supervisory activity is also provided by the Legislative Decree of 24 February 1998, No. 58 (Italian Official Gazette of 26 March 1998, No. 71) on financial intermediaries, according to which *Banca d'Italia* is charged with the task of limiting the hazard and safeguarding the patrimonial stability (Article 5, par. 2). See Capriglione F., *Commento al d.lgs. 1° settembre 1993, n. 385*, in Alpa & Zatti (eds.), *Commentario breve al codice civile e leggi collegate*, Padova, 2000; ID, *Commentario al testo unico delle leggi in materia bancaria e creditizia*, Padova, 2001; Camelia M., *Innovazione finanziari politica monetaria e vigilanza prudenziale sulle banche*, Torino, 1996.

[73] For further details about this, see the 2001 Governor's general relation, pp. 413-415.

[74] Published in the Italian Official Gazette of 15 February 2002, No. 39.

[75] Published in the Italian Official Gazette of 23 April 2001, No. 94.

[76] Published in the Italian Official Gazette of 3 January 2002, No. 2.

[77] Published in the Italian Official Gazette of 31 December 1999, No. 306.

[78] Source: *Le nuove banconote – Un aggiornamento*, speech by Dr. A. Finocchiaro (Vice-general director of *Banca d'Italia*) at the conference organised by ABI-Bancaforte, titled "Cash Meeting 2001", Rome, 19 March 2001. The text is available on internet: http://www.bancaditalia.it/interventi/intaltri/finocchiaro_19_03_01.pdf.

[79] By the terms of Article 3, first sentence of the Statute, NCB's capital amounted to ITL 300.000.000.

[80] Moreover, according to the Decision of the European Central Bank of 8 November 2001 on certain provisions regarding access to the Counterfeit Monitoring System, former Counterfeit Currency Database (OJEC L 337 of 20 December 2001, p. 49 et seq.), it has been established a National Counterfeit Centre within *Banca d'Italia*.

[81] Act of the Governor of 21 January 2002, published in the Italian Official Gazette of 30 January 2002, No. 25. As for coins (*IPZS* is the Coin National Analysis Centre, CNAC) the relevant guidelines were issued by the *Ministero dell'economia e delle finanze* with ministerial Decree dated 1 March 2002 and published in the Italian Official Gazette of 16 April 2002, No. 89.

[82] *Supra*, p. 7.

OUTLINE

During the relevant period (1/1/2001-28/2/2002), the Italian legal framework did not undergo notable changes vis-à-vis the previous key legal adaptations enacted by the legislator in order to enforce the EMU *acquis*. These last ones, as it has been considered, introduced an institutional framework which assured at the same time the indipendence of Italian NCB from the Government, according to the EC Treaty and the Statute of European System of Central Banks and of the European Central Bank, and the institutional-procedural adaptations in order to guarantee the effectiveness of the process of enforcement of euro legislation (e.g. Euro Committee, provided by the Decree of Prime Minister of 27 June 1996 and established with ministerial Decree of 12 September 1996). Furthermore, provisions were enacted in order to render the legal instruments of public and private consistent with the new currency.

As regards the nature of the legislative instruments, because of the specificity of the subject and the difficulty in coordination, it had frequently recourse to the Legislative Decree, *i.e.* a governmental legislative act which should follow the general principles and criteria set down by the Parliament in the delegating act (e.g. Legislative Decree 213/98 according to the Law 433/1997).

As it has been noted[83], during the last period, Italian legislator amended the provisions which contained Lira amounts or Lira references. Furthermore, the need to bring the change over to completion has been strongly stressed by competent Institutions and has been carried out through four different axes.

First, it has been passed several legislative acts concerning the change over of the currency and the involved necessity, according to the principle of neutrality of the transition to the euro, to avoid every solution of continuity in comparison with the previous legal framework. Economic operators, credit Institutions and consumers were the principal beneficiaries of these provisions (e.g. Articles 1-3 of the Law Decree 350/2001).

Secondly, Italian legislator passed extensive amendments concerning the national economic and financial policy. Both the federalist reform of the State enacted by constitutional Law 3/2001, and the so-called "*fiscal shield"* enforced by Law Decree 350/2001, were part of this context. Moreover, with regard to the *ratio* of the *"fiscal shield"*, one has to note that by now the Euro Area (*i.e.* the area of Member States adopting euro as national currency) represents a dimension whithin which the economic policies and the involved legal instruments are not a national issue, but a Community one[84]. In the background, therefore, still lies the unsolved issue of the constitution of an economic, Community government which would be able to balance the so-called out-of-balance of the EMU pillar[85].

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[83] See Italian Legal Framework 2001-2002, p. __.

[84] See, governmental report on the Law Decree 350/2001.

[85] For further detail, refer to Euro Economic Governance, *Workshop Report*, 19 February 2001, http://europa.eu.int/comm/dgs/policy_advisers/economic_social_issues/issues/euro-economic-governance.pdf, and Louis J. V., *L' UEM et la gouvernance économique*, in European Commission, Fourth Ecsa-World Conference, *The European Union and the euro: economic, institutional and international aspects*, Luxembourg, 2000, pp.155-156.

The necessity to introduce a common legislation concerning the euro matters[86] had also an impact on the criminal law of Member States. Whithin this framework focused the third intervention: the enforcement by the Italian legislator of euro *acquis* concerning the policies enacted under the third pillar of European Union. In this regard, it should be noted that the accomplishment of the framework Decision 2000/383/JHA represents a relevant example of "european criminal law" enforced by all the Member States.

The achievement of an equivalent and increased protection by criminal law of the euro throughout the Union, concentrates on two main concerns: the heterogeneity of the sanctions provided by the EU States and the necessity to define and enforce a common strategy in order to avoid jurisdictional conflicts between Member Countries' competent Authorities (see Article 7 of Italian Penal Code and Article 7, par. 3 of the framework Decision 2000/383/JHA).

Finally, the last intervention regards the settlement of conflicts concerning the single currency between EU law and national law, or national law *tout court*. From this perspective, the main issue was undoubtedly represented by the enforcement of the principle of continuity of the contracts (and of all the legal instruments as well), which was object of a relevant debate among Italian (and european) scholars.

In particular, the main source of contention refers to circumstance that the rule established by Article 3 of the Council Regulation 1103/97 aimed at regulating all the possible forms of continuity, without distinguishing the involved matters.

In fact, in establishing whether the change in the currency of a State alters a contract, one has to consider several concerns. In particular, according to the opinion of the scholars[87] and to the international private law as well, the principle of continuity should involve three different principles:

- the principle of *lex monetæ* (or law of the currency) which determines whether the change over prevents the contract from continuing;
- the principle of *lex contractus* (or law of the obligation) concerning the change over vis-à-vis the hardship of the contract;
- the principle of *lex loci solutionis*, concerning the payment currency [88].

[86] In this regard, it should be noted that the geographical dimension of common currency extended to third Countries like the Principality of San Marino, the Vatican City State and, in the end, the Principality of Monaco through the enacting of Monetary Agreements.

[87] See, Visco C. & Simonetti L., *L'euro e il problema della continuità dei contratti,* in Diritto del commercio internazionale , 1998, pp. 107-134.

[88] See, Draetta U., *L'euro e la continuità dei contratti in corso*, in Diritto del commercio internazionale, 1997, p. 8; Dunnet D.R.R., *Some Legal Principles Applicable to the Transition to the single Currency*, in Common Market Law Review, 1996, No. 33, pp. 1136-1137.