

*RABAT , 25-27 September 2013*

*Mr. Nello Rossi, Procuratore aggiunto della Procura di Roma*

*Summary*

- 1.The defence of the Euro from counterfeiting in the Eurozone and in neighbouring countries.*
- 2. The process of standardization of penal law in the Eurozone.*
- 3.The present situation in the Eurozone.*
- 4. The position of Italy.*
- 5. The problems regarding investigations.*
- 6. New measures in the fight against counterfeiters.*
- 7. Statistics.*
- 8. The “new counterfeiters”.*
- 9. Problems regarding the cooperation of Italian Public Prosecutor with the Prosecutors of other Member States.*
- 10. Conclusion.*

*\* \* \**

## **1.The defence of the Euro from counterfeiting in the Eurozone and in neighbouring countries.**

This seminar is dedicated to very technical and real issues.

All together we will search for answers to definite and specific questions.

First : how the euro is counterfeited and how it is possible to reveal the forgeries.

Second: through what channels and routes the counterfeit banknotes and coins circulate inside Member States and in the neighbouring countries.

Third: what has to be the role of different public institutions, of banks and of private citizens in fighting production and distribution of counterfeit euros.

In the end : which kind of criminals we face up in this field, what are the most incisive investigations , what are the most effective measures and penalties against counterfeiting.

Of course also my speech will concerne these subjects and I will go through them beginning from my work experience.

But let me say, at the beginning of my short speech, that the issues that we are dealing with - sometimes very technical, very tiny, very specific - have actual and great meaning and value because they are part of an activity by far wider.

The euro is a money that already unites many countries and is the first ground of a broader process of economic and political integration in Europe.

The euro acts as a support of the Union's activity towards other countries and is a bridge towards them, particularly towards Mediterranean countries, all the time fundamental partners of Europe.

Therefore the defence of the euro from counterfeiting is a great task, a common problem of Mediterranean countries that is important to debate together, comparing different experiences and looking for effective answers.

## **2. The process of standardization of penal law in the Eurozone.**

We have listened to the speeches of Mr. Francesco Lo Voi and of Mr. Pierini with regard to the new interesting proposals for a directive of the Parliament and of the Council of the European Union on the protection of the euro against counterfeiting by criminal law and for replacing Council Framework Decision n. 383 of 2000.

Now I will take a step back , explaining how the European Union has dealt with the issue of penal protection of the euro and how, in this field, it needs the help of neighbouring States.

The long way to get an effectual protection of the euro started with an act that today remains fundamental: the Council Framework Decision of 29 May 2000.

The European States that decided to adopt the euro as their common currency were well aware that it would be an “*hard currency*”, used in all the world and therefore exposed to many risks of counterfeiting.

From the consciousness of these perils arose the necessity to ensure to the new money an adequate and uniform penal protection in the Eurozone and the need to take a way for coordinating in Europe the set of rules against counterfeiting.

In brief it was necessary an attentive operation of homogenization of the penal law of Member States , building “*uniformity*” and “*consistency*” where there were “*variety*” and “*differences*”. .

The Council Framework Decision has achieved a compromise between the need of standardization of penal law of Member States on the matter of counterfeiting and the exigency to respect the freedom of Member States in the field of criminal law.

The compromise has been made easier because there was an important precedent, a solid background on which to work..

The provisions of the Geneva Convention ( International Convention of 20 April 1929 for the Suppression of Counterfeiting Currency) and of its Protocol, provisions that have been taken into account in writing the above mentioned Framework Decision.

So the Council Framework Decision has completed the work of this international Convention, particularly dealing with four great problems.

First: to indicate to the Member States the facts and the conducts that each State must punish as offence.

Second: to describe the kind of penalties enforceable to the crimes of counterfeiting.

Third: to identify, to pinpoint the States having jurisdiction on matter of counterfeiting in case of crimes committed in a plurality of Member States and the modalities of cooperation among the States

Fourth: to provide for the liability of legal persons get involved in crimes of counterfeiting.

### **3.The present situation in the Eurozone.**

The Council Framework Decision of 29 may 2000 and the following Council Regulation n. 1338/2001 of 28 June 2001 outlined a solidly built context in which the Member States must operate against counterfeiting.

Certainly there are limits and lacunas of the Framework Decision, that are amply represented in the “*explanatory memorandum*” of the new proposal of directive on the protection of the euro and have been recalled in the opening speeches.

But the general structure of the Framework Decision of 2000 is still valid and it is a well grounded foundation for the necessary improvements regarding the harmonization of the “*minimum level*” of sanctions for currency counterfeiting and of sanctions for “*distribution*” offences.

Today – as a consequence of the adjustment of the legislation of Member States to the European guidelines - are punishable as offences in all the Eurozone the following conducts :

*(a) any fraudulent making or altering of currency, whatever means are employed;*

*(b) the fraudulent uttering of counterfeit currency;*

*(c) the import, export, transport, receiving, or obtaining of counterfeit currency with a view to uttering the same and with knowledge that it is counterfeit;*

*(d) the fraudulent making, receiving, obtaining or possession of*

*- instruments, articles, computer programs and any other means peculiarly adapted for the counterfeiting or altering of currency, or*

- *holograms or other components of currency which serve to protect against counterfeiting.*

Are also punishable the “*participating in*”, “*instigating*” and “*attempting* the conducts above mentioned.

Moreover, each Member State has taken measures to ensure that the conducts above mentioned are punished by “*criminal penalties, including penalties involving deprivation of liberty which can give rise to extradition*”.

In particular the offences of fraudulent “*making*” or “*altering*” of currency are punished by terms of imprisonment,” *the maximum being not less than eight years*”.

Specific measures have also been taken, in all the Member States, to ensure that legal persons can be held liable for the offences committed for their benefit by any person - acting either individually or as part of an organ of the legal person - who has a leading position within the legal person.

There is liability of legal persons also where the lack of supervision or control by executives has rendered possible the commission of an offence for the benefit of the legal person by a person under their authority.

In accordance with the provisions of mentioned Council Framework Decision the sanctions for legal persons in the Member States include criminal or non-criminal and other sanctions such as:

(a) *exclusion from entitlement to public benefits or aid;*

(b) *temporary or permanent disqualification from the practice of commercial activities;*

(c) *placing under judicial supervision;*

(d) *a judicial winding-up order.*

It is important to add that - in the context of the Member States - the new provisions concerning the European warrant of arrest contribute to the incisiveness of the penal repression of crimes of counterfeiting inside the Eurozone.

#### **4. The position of Italy.**

Italian State didn't run into particular difficulties in conforming its penal law to the mentioned decisions of the Council of European Union.

In my country, as you probably know, skilled counterfeiters and criminal associations have always worked , being very active, in the field of counterfeiting of the former Italian currency , the lira.

So , in our penal code - that goes back to 1930 - there were already severe penalties against counterfeiting.

Penalties that punished precisely the conducts considered by the Council of the European Union in its Framework Decision of May 2000 and in the following Regulation of 2001.

In short, the articles n. 453 and next of Italian penal code punish with strict penalties,

- a) *the fraudulent making or altering of currency;*
- b) *the fraudulent uttering of counterfeit currency;*
- c) *the import, export, transport, receiving, or obtaining of counterfeit;*
- d) *the fraudulent making, receiving, obtaining or possession of instruments for the counterfeiting.*

There are also penalties for the *participating in* and *instigating* the conducts of counterfeiting and *attempting* them.

On the other hand the penalties were perfectly in line with the European standards because the minimum of the imprisonment for the most serious offences of counterfeiting is three years and the maximum twelve years ( art. 453 penal code).

Therefore in Italy it has been enough to update the penal code to the new computer technology, adding , in the list of instruments for the counterfeiting, *the computer programs*, obviously non considered in the code of 1930.

## **5. The problems regarding investigations.**

Further on I will speak about problems regarding cooperation of Italian Public Prosecutor with the Prosecutors of other Member States and about the difficulties arisen in Italy on this front because of constitutional rules concerning public prosecution and criminal proceedings.

Previously I would like to dwell upon the problems concerning the investigations and in particular upon the role of criminal associations in counterfeiting.

On the one hand I have many doubts and , as far as I know, there is no recent, particular and revealing evidence that the great criminal organizations as Mafia,

N'Drangheta and Camorra are directly and hard mixed up in activities of counterfeiting.

On the other hand it is certain that - for obtaining considerable outcomes from all the different kinds of counterfeiting - it is necessary a specific division of labour and an organization with a distribution of tasks among persons having different skills and roles.

Therefore, nearly always, in inquiries into cases of counterfeiting we face up a criminal association but not an association Mafia-style.

The penalty for the offence of “criminal association” (less severe than that for the offence of Mafia style associations) is imprisonment “*the minimum three years and the maximum seven years*”, ( art. 416 penal code), and obviously this sanction added to the penalties of counterfeiting.

It is easy to assume that in the Italian regions kept under control of Mafia, Camorra and N'drangheta , these last organizations – notwithstanding , as I said, not directly involved in counterfeiting - are perfectly aware of the presence and of the operativeness of counterfeiters on their ground and allow their activity, sometimes drawing a protection money.

That happens particularly in Campania, where there is an old experience and tradition on matter of counterfeiting and , as I told before, many skillful counterfeiters work.

## **6. New measures in the fight against counterfeiters**

The Italian investigators and public prosecutors think that the fight against counterfeiters could get more incisive adopting in this field techniques and measures already successfully experienced in the fight against drugs and in other fields.

Measures that would be specifically useful for revealing “all” the members of a criminal association, avoiding that the arrest of a single utterer of counterfeit money puts an end to the investigations.

I am referring:

- a) to the possibility of utilizing - in the more complex investigations- *undercover agents*, infiltrating the associations of counterfeiters;
- b) to the suitability of introducing *controlled deliveries* of counterfeit banknotes as is already today possible for the deliveries of drugs;

c) to *planned delays of intervention* of policemen in those case where the law prescribes the arrest *in flagrante delicto*.

Therefore it would be important – as it is written in the proposal for a directive of the Parliament and of the Council of the European Union on the protection of the euro - to update the European and national provisions against counterfeiting, introducing these and other effective measures.

From this point of view I agree with the proposals that I have heard of , proposals that have been arisen in our previous seminars.

## **7. Statistics.**

The necessity to strengthen the repression of these crimes is stressed by the extent of the phenomenon of counterfiting that remains a crime of relatively large dimensions.

In Italy there have been:

564 trials for different offences of counterfeiting in 2009;

608 trials in 2010;

571 trials in 2011.

In the same years there have been several judicial attachments of counterfeit banknotes and illegal print shops, particularly active in the area of the city of Naples.

The detailed statistical data of this criminal phenomenon are attached to the text of my paper.

## **8. The “new counterfeiters”.**

All this considered , we cannot ignore that - in parallel with these traditional issues - new problems are rising regarding the counterfeiting of credit and debts cards.

In this field we face up those that I might call the “new counterfeiters” .

They use treacherous techniques for stealing the data of economic identity ( like *phishing* on Internet to detriment of unaware users, or *illegal access* to information systems or, again, the *theft of the data* in places as restaurants, supermarkets, shops).



Afterwards , the stolen data are often transferred in other countries, maybe far away, for example in South America or in Asia, where false cards are made and spent, normally for little amounts.

In all these cases the single investigations are very difficult and uneconomic because it isn't expedient to send letters of request – rogatory letters I mean - in a foreign State for for misdemeanours and for so small sums of money.

So, many cases are dismissed without investigations.

The real dangerousness of these offences is clear only if we look at them as a whole and in their serial nature.

In this field the investigations are successful only when we can detect the associations - frequently transnational - engaged in criminal activities of counterfeiting.

For example, an year ago , Italian policemen , Carabinieri, discovered a complex criminal chain , working in different countries.

The customers' code numbers were stolen in England, in great supermarkets, as Tesco, Lotus et cetera.

Then , the data were sold to criminal associations in Ucraina and resold in all the world, at different prices according to the capacity of purchase of the card ( golden card, normal, and so on)

In the Italian region , Campania, a criminal association bought the codes and made easily many false cards in a local print shop.

Other members of criminal association were appointed to spend the cards in purchases of various kind.

The investigation began when a petrol pump attendant, become suspicious for failed attempts of purchase, made a note of the car's plate and communicated it to police.

Long wiretappings and shadowings permitted then to identify the members of an extensive criminal association and arrest them.

## **9. Problems regarding the cooperation of Italian Public Prosecutor with the Prosecutors of other Member States**

As I told before, it was easy to coordinate Italian penal provisions against counterfeiting with the European standards.

Greater difficulties have arisen on issues of jurisdiction and cooperation of Italian Public Prosecutors with the Prosecutors of the other Member States, because of our constitutional rules concerning public prosecution and criminal proceedings.

The European provisions on jurisdiction – I am speaking of Framework Decision of 2000 - decree that:

*“each Member State shall take the necessary measures to establish its jurisdiction over the offences where the offence is committed in whole or in part within its territory”*

and successively :

*“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 Member State shall prosecute the offender or offenders with a view to centralising the prosecution in a single Member State where possible”*

This solution, that I would call “ *agreement upon jurisdiction*”, is very problematic for Italian Public Prosecutors because, according to our Constitution ( art. 112) , the public prosecutor hasn’t discretionary power with regard to the investigations but “must” investigate whenever is informed of a possible offence.

So the Italian Public Prosecutor can’t give investigation up, as established by the Council.

The discussion about possible solutions of this problem and in general terms *about “agreements upon jurisdiction”*, is still open.

In my opinion it would be possible for the Italian Public Prosecutor to dismiss the case, whenever he recognizes - according the article 125 of complementary regulation to the code of procedure - that he can’t call the committal for trial, not only for lack of evidence but also when the investigations are extremely difficult in Italy and the Prosecutor of an other Member State is , in comparison with him in a better position for calling the committal for trial.

In this event the Italian Prosecutor could dismiss the case , giving the investigation up in favour of the Prosecutor of an other Member State, without any violation of the constitutional rule.

## **10 . Conclusion.**

I am closing my speech.

Penalties, investigations and trials are, obviously, only a part of the necessary action for protecting and consolidate the euro.

But this activity remains essential because a great money under threat of counterfeiters can taint the whole global market and make uncertain trades and currency swaps among all countries.

To strengthen international cooperation is useful and contributes to create a climate of security and reliability in the market of goods and currencies that already experiences many strains for other reasons.

If meetings like this succeed to increase common sensibility and awareness on the issue of counterfeiting, then they have to be considered favourable and intensified.

**Nello Rossi**

## *Abstract*

*The speech presents - in its first part - the stages of the process of standardization of rules and regulations among the different States of the Eurozone and the progressive building of a solid framework, valid in all the Member States adopting euro as their currency.*

*The second part examines the modalities adopted in Italy - without many difficulties- for making its penal law uniform to the Union's standards, so accomplishing its duties in this field .*

*The speech goes on analysing the role of criminal associations in counterfeiting , examining the best practices in investigations and suggesting useful proposals for improving the contrast to falsification of banknotes and metallic coins.*

*Attention is also be payed to the “new counterfeiters”, working in the field of credit cards and debit cards and employing sophisticated mechanisms for stealing personal identities and customers's code numbers, for making false cards and for spending the virtual money in all the world.*

*In the end the speech considers the peculiar problems of cooperation among the Member States in the investigations concerning crimes committed in a plurality of countries.*

*In particular are scrutinized the difficulties arisen in Italy on the front of cooperation because of constitutional rules concerning public prosecution and criminal proceedings.*