ARTICLES

COUNTERFEITING THE SINGLE EUROPEAN CURRENCY (EURO): TOWARDS THE FEDERALIZATION OF ENFORCEMENT IN THE EUROPEAN UNION?

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I. A SINGLE EUROPEAN CURRENCY AND ENFORCEMENT IN THE EU

The introduction of the single European currency (euro) is a crucial landmark in the history of European integration. Indeed, as of January 1, 1999, the euro unit and the national currency units have become units of the same currency; the euro countries have ceased to have monetary jurisdiction and have become dependent on the measures ordered by the European Central Bank (ECB). On January 1, 2002, after a transitional period of three years, euro notes and coins were introduced as legal tender. With the introduction of the euro as the single currency for the euro-zone and as a potential worldwide transaction and reserve currency, the security of the euro and the anti-counterfeiting policy are of fundamental importance to the trust put in the European Union.

The federalization of the monetary policy and the introduction of a single currency are far-reaching steps in the framework of the creation of the Economic and Monetary Union, one of the key policies within the European Union. These steps will certainly press towards further integration in the field of financial services, tax policies, etc. From the introduction of the euro as a cornerstone of community policy, it cannot, however, automatically be derived that the enforcement of anti-counterfeiting measures would be a competence of the European Community (first pillar, as part of the economic and monetary policy)[1] or of the European Union (third pillar, as part of the co-operation in the field of Justice and Home Affairs).[2] The deepening and widening of the European integration process has not yet resulted in a federal state structure with complete sovereignty. As opposed to Nation States, in the European Union there is no complete separation of powers along the lines of the *trias politica* doctrine. The European Union is based on shared governance between the European Community/European Union and the Member States, being an integrated community legal order.[3] Enforcement of the

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[1] Compliance and Enforcement of European Community Law (John A. E. Vervaele ed., 1999).

[2] Treaty on European Union [TEU], arts. 29-42; John A. E. Vervaele, Transnational Enforcement of the Financial Interests of the European Union, Intersentia Law Publishers (John A. E. Vervaele ed., 1999); Steven Peers, EU Justice and Home Affairs Law (2000).

[3] The integrated legal order of the European Community is quite different from the legal order of the

regulatory tools of the European Community and of the European Union in principle belongs to the jurisdiction of the Member States. They have the jurisdiction to prescribe, to enforce or to adjudicate. For this reason, the European Union has no jurisdiction in the field of criminal law to prescribe federal offenses, to enforce them and to adjudicate them before federal tribunals. Federal offenses do not exist, there is no European police force,[4] no federal Public Prosecutor's Office, and the European Court of Justice has no jurisdiction in criminal matters.[5]

However, the fact that the federalization of criminal law enforcement is still in its emerging stage does not mean that the (criminal) enforcement systems of the Member States are entirely exempt from the influence of Community law and Union law.[6] The European Court of Justice has imposed upon the Member States a general enforcement obligation, both in theory and in practice.[7] The Community and the Union have used their jurisdiction to bind the Member States (through harmonization, common policies, etc.) to impose enforcement obligations. For instance, in the field of Community law, these obligations include substantial norms, obligations in the field of administrative verifications and civil sanctions[8] and obligations in the field of administrative co-operation;[9] in the field of Union law, these obligations include obligations in the area of criminal law (offenses, sanctions), criminal procedure and international criminal law (judicial co-operation in criminal matters, extradition, etc.).[10] Besides the extensive harmonization of the national enforcement systems and tools (indirect enforcement), first steps have also been taken towards a federal competence of the Union to enforce in the areas of competition, agriculture and protection of the EU budget (direct enforcement).[11] Investigative powers for European inspectors[12] are provided under specific regulations in the field of competition, nuclear energy, agriculture, fisheries and the protection of the financial interests of the EU. Only in the field of competition, nuclear energy and the protection of EU financial interests can the European law enforcement agencies inspect autonomously and under their own authority, although their mandate is limited to administrative inspection, excluding the use of coercive powers such as search and seizure. In the other fields mentioned, the mandatory administrative inspection has to be carried out in co-operation with and under the

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Federation and the States in the U.S., based upon a binary model.

[4] Europol has no executive, operational police powers; its competence is limited to intelligence in the field of organized crime and other serious offenses.

[5] The European Court of Justice cannot try indicted persons; it does, however, have the jurisdiction to interpret applicable community law in criminal cases, when a national judge refers the case under a preliminary ruling.

[6] See Compliance and Enforcement of European Community Law, supra note 1.

[7] This obligation is based on the duty of community loyalty. Treaty Establishing the European Community [TEC], art. 10.

[8] They include fines, withdrawal of subsidy systems, withdrawal of professional rights, etc. In the civil law tradition these civil sanctions are labeled as administrative sanctions, as they are initially imposed by administrative authorities.

[9] European Cooperation between tax, customs and judicial authorities: the Netherlands, England and Wales, France and Germany 9-28 (John A.E. Vervaele & Andre Klip eds., 2002).

[10] Id. at 28-45.

[11] John A.E. Vervaele, Towards an Independent European Agency to fight fraud and corruption in the EU?, Eur. J. Crime, Crim. L. & Crim. Just. 331, 33146 (1999).

[12] John A.E. Vervaele, Gathering and use of evidence with regard to the infringement of EC Financial Interest. Community regulation and operational application of investigative powers, in Exclusion of Evidence Within the EU and Beyond 245, 24593 (Frank Höpfel & Barbara Huber eds., 1999).

authority of the national law enforcement agencies.[13] The creation of European regulatory agencies in the field of pharmaceutical products, food safety, aviation, etc., did not change this situation, as these agencies have no enforcement powers whatsoever.

The introduction of the euro might act as a catalyst in the process of increasing federal jurisdiction in the field of enforcement. For this reason, it is interesting to compare the introduction of the U.S. dollar with the counterfeiting policy in the federal structure of the Union.

II. SINGLE CURRENCY AND FEDERAL JURISDICTION IN THE UNITED STATES

The history of counterfeiting of currency in the United States is very much connected with the increase in federal regulatory and enforcement power. The Founding Fathers were well aware of the necessity of a federal currency clause in the U.S. Constitution. Given the absence of bank notes, however, they limited this clause to coins: "The Congress shall have the power ... to coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures."[14] Well aware of the danger of counterfeiting, they included a Counterfeiting Clause: "The Congress shall have Power ... to provide for the Punishment of Counterfeiting the Securities and current Coin of the United States."[15] Counterfeiting was among the rather limited express list of crimes that Congress had the power to punish.[16] In the nineteenth century, the introduction of paper bills instead of just coins as regular currency made things much worse. It is estimated that during the Civil War, 30 to 50 % of the currency in circulation was counterfeit.[17] We must not forget, however, that state banks designed and printed their own bills. Between 1793 and 1861, around 1,600 state banks were permitted to print and circulate their own paper currency under State Charters.[18] During this time period, there were about 7,000 varieties of bills.[19]

In 1862, during the Civil War, the Secretary of the Treasury asked Congress for the authority to issue paper notes in payment of government obligations, in particular to finance the war.[20] In 1861, the Government had already passed an Act permitting the Treasury Department to print and circulate paper money: Demand Notes. Congress

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[13] Id.

[14] U.S. Const. art. I, § 8, cl. 5

[15] U.S. Const. art. I, § 8, cl. 6.

[16] The other crimes are piracy, felonies committed on the high seas, offenses against the Law of Nations and treason. Of course Congress has very often used other non-explicit clauses, like the Commerce Clause and the Necessary and Proper Clause, as a legal base for the jurisdiction to prescribe, to enforce and to adjudicate federal crimes. U.S. Const. art. I, § 8, cl. 3 ("The Congress shall have power ... to regulate commerce with foreign nations, and among the several States ..."); U.S. Const. art. 1, § 8. cl. 18 ("The Congress shall have power to ... make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof").

[17] Nathan K. Cummings, The Counterfeit Buck Stops Here: National Security Issues in the Redesign of U.S. Currency, 8 S. Cal. Interdisc. L. J. 529 (1999).

[18] Id.; see also http://www.ustreas.gov/usss/money_history.htm.

[19] Id.

[20] Cf. David R. Johnson, Illegal Tender. Counterfeiting and the Secret Service in Nineteenth-Century America (1995).

responded by enacting the Legal Tender Acts,[21] which made treasury notes legal tender, and which created in 1863 a single national currency, United States Notes nicknamed 'greenbacks', replacing the State Bank notes.[22] The technical printing and security problem was resolved by the creation of the Bureau of Engraving and Printing. The value of the USD stabilized, but the intensive circulation of the currency and the increasing counterfeiting of it obliged the federal government in 1865 already to provide for a specific enforcement agency for combating bogus money: the Secret Service.[23] However, the constitutional and statutory authority to enforce counterfeiting was a controversial issue, linked to the federal versus state jurisdiction debate. Already in 1816, the Supreme Court stated in the case of *McCulloch v. Maryland*[24] that Congress could use the Necessary and Proper Clause[25] to establish federal powers related to economic and fiscal powers. The Supreme Court was for the first time confronted with a case of counterfeiting in *Fox v. Ohio*.[26] Fox had been convicted under a state statute prohibiting the passing of counterfeit U.S. coins. The Supreme Court did not follow the reasoning of the defendant, who stated that the Counterfeiting Clause and the Coinage Clause provided Congress with the exclusive power to punish offenses against the nation's coin.[27] The Supreme Court reasoned that counterfeiting was an offense directly aimed against the federal government and thus appropriately within Congress' reach, whereas passing counterfeits is a "private harm" that lies within the States' police power. The Supreme Court overruled its own opinion, at least concerning the interpretation of the Coinage Clause, in the case of *U.S. v. Marigold*.[28] Marigold, convicted in a federal court of the illegal import of counterfeit U.S. coins, attacked the federal legal basis of the statutes by arguing that they were unconstitutionally broad exercises of congressional power. The Supreme Court rejected the arguments of the defendant by stating that the federal statutes were appropriate exercises of power under both the Domestic and Foreign Commerce Clause and the Coinage Clause.[29] Counterfeiting was thus perceived as a serious threat to the development and functioning of the national economy. In its opinion, the Supreme Court underlined that the power to regulate interstate economies includes the Congressional power to operate on any and every subject of commerce within the legislative discretion.

The power of Congress to provide a national single currency was of course at stake in several cases at the end of the Civil War, mostly because people did not accept the greenbacks as ordinary money and wanted restitution in gold and silver coins for goods and monies illegally confiscated during the Civil War. An interesting case before the Supreme Court was *Veazie Bank v. Fenno*, in which the Supreme Court upheld the congressional power to secure a uniform single currency.[30] However, the Legal Tender

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[21] Act of February 25, 1862, 12 Stat. 345; Act of July 11, 1862, 12 Stat. 532; Act of March 3, 1863, 12 Stat. 709.

[22] The Federal Reserve Act, establishing the Federal Reserve System, was only adopted in 1913.

[23] See Cummings, supra note 17.

[24] McCulloch v. Maryland, 117 U.S. 316 (1819).

[25] U.S. Const. art. I, § 8, cl. 18.

[26] Fox v. Ohio, 46 U.S. 410 (1847).

[27] Id.

[28] United States v. Marigold, 50 U.S. 560 (1850).

[29] Id.

[30] Veazie Bank v. Fenno, 75 U.S. 533 (1869).

Acts were declared unconstitutional by the Supreme Court in *Hepburn v. Griswold*.[31] The appointment of new Justices made it possible for the *Hepburn* decision to be overruled in the Legal Tender case in 1870.[32] This was without a doubt a milestone case, because in it the majority opinion as well as the concurring and dissenting opinions took into account all former cases concerning the topic at stake. The Court did not rely on the Coinage Clause, but looked to other parts of the Constitution, mainly the Necessary and Proper Clause, for the power to make treasury notes a legal tender between private parties at their nominal value for pre-existing debts.[33] Finally, the federal power to provide punishment for the counterfeiting of foreign money was upheld by the Supreme Court in *United States v. Arjona*,[34] where the Supreme Court stated that the International Clauses[35] in the Constitution and customary international law give the federal government the obligation and the duty to use due diligence to prevent this offense against the law of nations.[36]

III. AN INTERNATIONAL RESPONSE TO TRANSNATIONAL COUNTERFEITING: THE GENEVA CONVENTION ON COUNTERFEITING CURRENCY

In Europe, the interest in the transnational counterfeiting of currency was only really perceived as a problem after a couple of major counterfeiting cases in the period between 1920 and 1930. France, for example, became the victim of large-scale counterfeiting of French francs in Hungary. Hungary had already been the scene of counterfeiting Yugoslavian and Czechoslovakian currency, but the scandal involving the French francs was a major one, due to high-level political participation in the counterfeiting case and the ensuing lenient treatment of the perpetrators.[37] Despite arrests made in the Netherlands and court cases conducted in Hungary, the outcome gave rise to considerable dissatisfaction. The sanctions were considered too light and a number of high-ranking civil servants and politicians were not prosecuted. This resulted in actions by a number of countries to regulate the problem in the framework of the League of Nations, the predecessor of the UN, as it was a known fact that the counterfeiting of foreign currency was not a punishable offense in every country.[38] Things could get worse than the Hungarian scandal. In the eyes of those taking the initiative, by taking the matter to the League of Nations, the counterfeiting of currency would be elevated to the level of a crime against the international legal order. The Financial Committee of the League of Nations created a Mixed Committee, consisting of specialists in international criminal law and chaired by the Romanian jurist Pella. The Mixed Committee produced an excellent comparative law report, which took into account criminal law, criminal procedure and international criminal law, and elaborated

[31] Hepburn v. Griswold, 75 U.S. 603 (1870).

[32] Legal Tender Cases, 79 U.S. 457 (1870).

[33] Id.

[34] United States v. Arjona, 120 U.S. 479 (1887).

[35] See, e.g., U.S. Const. art. I, § 8, cl. 3; US. Const. art. II. § 2, cl. 2; U.S. Const. art. I, § 8, cl. 10.

[36] *Arjona*, 120 U.S. 479.

[37] See P. Batbie, De la répression du faux monnayage, Toulouse 100-107 (1936); E. Fitz-Maurice, Convention for the Supression of Counterfeiting Currency: An Analysis, 26 Am. J. Int'l L 535, 535 (1932).

[38] See id.

a draft Convention.[39] In the Mixed Committee a clear trend was discernible, typical of the spirit of the age, in favor of the establishment of an International Criminal Court, which would also be given jurisdiction to try financial crime, including the counterfeiting of currency.[40] This trend did not prevail at the Diplomatic Conference of the League of Nations, to which thirty-five states sent delegates, and the result was limited to the approval and ratification of the International Convention for the Suppression of Counterfeiting Currency (signed in Geneva on April 20, 1929).[41] The Convention can be regarded as a balance between the necessity to internationalize the crime of counterfeiting currency and the political duty to respect the legislative autonomy of the sovereign states.

The Convention is classic in the sense that its provisions limit the Convention to the jurisdiction to prescribe. This means that no transnational or supranational powers are created with respect to investigative acts or sanctioning. The provisions of the Convention are addressed to the States Parties and aim to approximate each other's legal systems and practices. Article 18 clearly states: "The present Convention does not affect the principle that the offences referred to in Article 3 should in each country, without ever being allowed impunity, be defined, prosecuted and punished in conformity with the general rules of its domestic law." Nevertheless, the Convention in some respects contains far-reaching obligations, especially for that time, but even still for our time.[42]

The Convention prescribes a number of penalizations (Article 3). However, the penalizations only include the *actus reus*; the *mens rea* and the sanctions are left out of consideration. What is remarkable also is that States Parties must protect through the means of criminal law the domestic currency and the foreign currencies in a similar way (Article 5). The Convention also contains important organizational points. Article 12, for example, stipulates that:

> In every country, within the framework of its domestic law, investigations on the subject of counterfeiting should be organised by a central office. This central office should be in close contact:
> a. With the institutions issuing currency;
> b. With the police authorities within the country;
> c. With the central offices of other countries.
> It should centralise, in each country, all information of a nature to facilitate the investigation, prevention and punishment of counterfeiting currency.

Article 13 imposes upon the central authorities the duty to co-operate and to exchange information. Article 14 specifies these duties. The exchange includes information about the discovery of counterfeit currency and about ongoing investigations and prosecutions. It is astonishing that already in 1929, States Parties were able to agree on the principle of direct communication of letters rogatory, if possible between the central authorities. The message clearly was to avoid as much as possible the royal/diplomatic channel (Departments of Justice and Foreign Affairs) for letters rogatory and to try to

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[39] V. Pella, La coopération des Etats dans la lutte contre le faux monnayage, Revue Générale de Droit International Public 673 (vol. I, 1927); see also Batbie, supra note 37, at 108-40.

[40] See id.

[41] League of Nations, Treaty Series, no. 2636, 375-97.

[42] For a commentary from that time, see Batbie, supra note 37, at 141-77.

set up an efficient system.

At the conference, the question of the establishment of a central internationaloffice was also at stake. The Austrian Government and the International Criminal Police Commission at Vienna even pushed, albeit in vain, the idea of an International Bureau in Vienna as the official central international office of the League of Nations:

> While both the Mixed Committee and the conference recognized in principle the desirability of creating such an office to keep in touch with the national central offices of all countries, yet they considered that the time had not yet come to establish such an office.[43]

Even though the sovereignty of the States Parties is recognized (see Article 18), the Convention prohibits states from excluding counterfeiting from extradition. The Convention even introduces a duty to extradite on the basis of the Convention itself, in the event states do not make the extradition dependent on the existence of a treaty or reciprocity (Article 10). A general duty to extradite is further elaborated in an optional protocol, which stipulates that the offenses in Article 3 shall be considered ordinary offenses, for which extradition shall be granted according to the law of the country to which the application is made. In the case of non-extradition of states' own nationals, Article 8 introduces a duty to prosecute such nationals and punish them in the same manner as if the offense had been committed in their own territory. The fact that this had to be regulated in an additional protocol was due to the fact that no agreementcould be reached about the penalization of counterfeiting as a common criminal offense, not having political or financial/fiscal connotations and thus possibly excluding extradition. This Convention clearly limits the effect of the classic Act of State doctrine, by which Sovereign States do not assist each other in fiscal or criminal matters.

To this day, the Geneva Convention is an important tool in the struggle against counterfeiting of currencies. Thanks to the Geneva Convention, the provisions with respect to counterfeiting have, to a certain extent, been harmonized in the states and a certain level of co-operation has been created via the central offices. For this reason, it is remarkable that the Convention has not (yet) entered into force in two EU Member States, i.e., Luxembourg and Sweden.[44]

IV. STATE OF THE ART CONCERNING COUNTERFEITING OF INTERNATIONAL RESERVE AND TRANSACTION CURRENCIES

The fact that the financial world, the financial regulatory agencies and the law enforcement agencies are extremely interested in the volume and the *modus operandi* with respect to counterfeiting currencies will be no cause for surprise. In the course of the proceedings preparing the Geneva Convention of 1929, an inquiry was conducted among various banks of issue in different countries. The result showed an astonishingly high amount of confiscated USD in a short period of time.[45]

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[43] Fitz-Maurice, supra note 37, at 548.

[44] Information confirmedby Europol and the Ministry of Foreign Affairs in The Hague. Luxembourg has a monetary union with Belgium and did sign, but never ratifiedthe Convention, while Sweden did not even sign the Convention.

[45] Fitz-Maurice, supra note 37, at 534 ("The resultof this - 27 banks replied - showed that from 1924 to

Publicly available information about counterfeitingof European currencies is either scarce or non-existent. Even with respect to the Deutsche mark, which is the only European currency used in large amounts as a transaction medium in Europe, no public reports are available. In the U.S., however, an extensive report was recently published on "The Use and Counterfeiting of United States Currency Abroad."[46] The report was jointly drafted in an Advanced Counterfeit Deterrence Steering Committee, which consists of staff from the Treasury Departmental Offices, the U.S. Secret Service, the Bureau of Engraving and Printing, and the Board of Governors of the Federal Reserve System. Several specific countries, including Russia and Argentina (being the largest dollar holdings outside the U.S.) were visited; in-depth contacts with central banks, wholesale bank note distribution centres and specific contacts of the U.S. Secret Service were realized.

The widely known phenomenon that the USD is a truly worldwide currency is here substantiated by figures. Of the $500 billion Federal Reserve notes in circulation, as much as 70 % are held abroad. The main areas of dollar transactions are the former Soviet Union, Latin America and the Middle East. In many of these countries, the USD is a store of value, a transaction medium and a unit of account even when it is not the official currency. The main hubs for the distribution of USD outside of the U.S. are Buenos Aires, Frankfurt, London, Zurich, Hong Kong and Singapore.

This large amount of USD abroad on the one hand results in an enormous tax revenue for the U.S. - U.S. taxpayers gain by effectively receiving an interest-free loan in the amount of currency held overseas,[47] but on the other hand it leads to a worldwide risk of counterfeiting of the USD. To what extent is the USD counterfeited and how much counterfeit USD are circulating overseas? Can we speak of global counterfeiting? The value of counterfeits detected are the highest for the 100 USD bank note, being 6.32 detected on a million of dollars.[48] In the fiscal year 1998, a value of about $43 million in counterfeit currency was passed to the public,[49] or about $1 for every $11,600 in circulation.[50] Of that $43 million, almost all ($40 million) was passed in the United States, with the remainder passed overseas.[51] So by far, most of the counterfeit USD are intended for the U.S. However, the production of counterfeit U.S. currency and the seizure of it to a large extent occur outside the U.S. The Report indicates six countries

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1927 counterfeit currency to the amount of $ 3,000,000 was confiscated in these 27 countries.").

[46] "The Use and Counterfeiting of United States Currency Abroad" is a report to the Congress by the Secretary of the Treasury, which was published by the United States Department in January 2000.

[47] Id. ("Technically, dollars held abroad do not reduce the level of either Treasury borrowing or Treasury interest payments. Rather, by expanding Federal Reserve liabilities (Federal Reserve notes outstanding) and commensurately, Federal Reserve assets (U.S. government securities), dollars held abroad increase the quantity of Treasury liabilities held by the Federal Reserve and the amount of Treasury interest paid to the Federal Reserve. Since, at the margin, all Federal Reserve earnings are returned to the Treasury, the effect is that the Treasury avoids paying interest on the value of outstanding debt equal to the Federal Reserve notes held outside the country.For example in 1994, the estimated $ 250 billion of dollars held abroad yielded $ 13.6 billion (at 5.44 percent); this was 66 percent of the $ 20.7 billion paid to the Treasury by the Federal Reserve.").

[48] In the Report, it is clearly stated that the inidence of counterfeiting of the new-design notes is dramatically lower than that of the olderdesign notes. See id. The new currency design was introduced in 1996, beginning with the $100 denomination. The older-design notes are still legal tender.

[49] Only notes passed cause losses to the public.

[50] Report, supra note 46.

[51] See id. at 56-57.

and one region that deserve special interest when dealing with counterfeiting threats: Russia, Colombia, South Africa, Germany, Italy, Vietnam and the Middle East. Colombia is in the top ten of countries by value of seized counterfeits and is the most important source of counterfeits flowing into the U.S. Of all the counterfeit currency passed within the U.S. in the fiscal year 1998, 36% originated in South America and Colombia accounted for 97% of that amount.[52] Russia has the most U.S. currency of any country besides the United States and produces a substantial quantity of counterfeits.[53] The seized amount is not very high, but this is probably more accurately explained by the quality of the local law enforcement than by the phenomenon as such. The U.S. Secret Service opened an office in Moscow early in 1999, which has strengthened its ability to conduct investigations and to gather evidence. The most surprising key country is, however, Italy. Already in 1985 the U.S. Secret Service established a Task Force in Milan, aware of high ongoing counterfeiting activity in Northern Italy. Counterfeit USD of Italian origin apparently are of extremely good quality. The counterfeiters in Northern Italy use greatly advanced technology, producing both computer-generated counterfeits and counterfeits produced by using very sophisticated machine copiers and printers. In 1996, the Secret Service decided to open a permanent office in Milan. If this resulted in an increased crime registration or less dark number is not clear, but in the fiscal years 1996-1998, Italy was among the top three countries of seized counterfeit U.S. currency in the world. In 1998 Italy even occupied the first place.[54] Indeed, 37,614,330 notes were seized in Italy, while 29,942,874 notes were seized in the U.S.[55]

The authors of the Report complain about counterfeit policies outside the U.S.:

> Generally speaking, counterfeiting of U.S. banknotes has not been and still is not considered a significant offense in most countries. In addition, there was neither a central repository for counterfeit notes nor a coherent policy for reporting counterfeit activity ... many improvements have been achieved in the Secret Service's investigative techniques, data gathering, and above all in relationships with the law enforcement and financial institutions. Field presence has increased, and new offices have been established in key strategic locations.[56]

For these reasons the Report insists on the transnational enforcement capacity of the Secret Service:

> Overseas banks and law enforcement agencies are eager to develop expertise, technology, and communication links with the Secret Service to detect and suppress counterfeiting activity ... foreign financial and law enforcement organizations generally welcome increased Secret Service presence overseas to coordinate and lead their efforts to detect and suppress counterfeiting

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[52] See id.

[53] See id.

[54] See id.

[55] South Africa came third with 16,743,200 counterfeit notes. Colombia, Germany and France are also in the top ten with counterfeit notes seized in far smaller amounts. These figures are, of course, revealing of the quality and efficiency of the law enforcement agencies, but also of the phenomenon as such.

[56] Report, supra note 46, at 54.

activities in their respective countries.[57]

A Bill of 1993 - the "International Counterfeiting Deterrence Act of 1993" - establishes an International Counterfeiting Deterrence Strike Force, which is a multipartite operational group, including members of the Secret Service, the FBI, the CIA, the Federal Reserve, the Attorney General, etc.[58] The Strike Force is responsible for a) intelligence gathering; b) international co-operation and agreements; and c) anti-counterfeiting training teams worldwide.[59] The operational entity is, however, the Secret Service. The Secret Service currently has permanent offices in fifteen cities in key strategic locations: Bangkok, Berlin, Bogotá, Hong Kong, London, Manila, Milan, Montreal, Moscow, Nicosia, Ottawa, Paris, Pretoria, Rome and Vancouver. It is also well known that the Secret Service makes use of task forces, of pro-active investigation techniques and of new intelligence. The Secret Service has recently developed two systems to improve statistical reporting: the Counterfeit Contraband System - an online communication system between the Secret Service Offices worldwide - and the Counterfeit Note Search Site, allowing authorized users to specify the identifiers on a note to determine if it is counterfeit.[60]

V. INTRODUCTION OF THE SINGLE EUROPEAN CURRENCY: LEGAL FRAMEWORK[61]

The original EC Treaty in Article 3 contained the legal basis for a certain co-ordination of the economic policies of the Member States, including the remedying of public debt, which was further elaborated in the original Article 104 and 105(1) of the TEC, by which Member States were obliged, solely and in co-ordination between them, to pursue the economic policy needed to ensure the equilibrium of the national overall balance of payments and to maintain confidence in the national currencies. The Single European Act, which entered into force in 1987, added a new Article 102a and a new chapter entitled "Co-operation in Economic and Monetary Policy." The convergence of economic and monetary policies necessary for the further development of the Community became a main policy issue. The Maastricht Treaty on the European Union (1992) made substantial amendments and additions to the TEC for the purpose of creating the Economic and Monetary Union (EMU). The Treaty of Amsterdam, signed in 1997 and entered into force in May 1999, did not amend the provisions relating to the EMU.

Politically, the deepening of the integration was prepared carefully. Already in 1969, the European Council decided that a plan should be worked out with a view to the creation of the EMU. In 1970, the Werner Committee started its activities. Its report outlined the main features of the future EMU: a single currency or at least total and irreversible mutual convertibility and centralization of the monetary and credit policy,

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[57] Id. at vii.

[58] See H.R. 3385, 103rd Cong. (1993) (to protect the integrity of the Nation's financial system from international counterfeiting and economic terrorism).

[59] See id.

[60] See http://www.ustreas.gov/org/sscounterfeit.htm

[61] For a more detailed analysis of the legal framework see John Anthony Usher, The Law of Money and Financial Services in the European Community (1999); Paul Beaumont and Neil Walker, Legal Framework of the Single European Currency (1999).

including a Community system of the central banks.[62] The gist of these conclusions was repeated by the Delors Committee in 1989. The Delors Committee was fully aware that the economic and financial integration could not be successful without a single currency and without the transfer of decision-making power from the Member States to the Community, both in the field of monetary and macro-economic policy. With regard to attaining the EMU, the Delors Committee recommended a three-stage procedure. The aim of stage one would be the progressive convergence of economic policies.[63] In 1989 in Madrid, the European Council decided that the first stage was to commence on July 1, 1990. It was recommended that in stage two, the institutional architecture would be fully established. This institution-building process required major Treaty amendments. The Maastricht Treaty defined the beginning of stage two on January 1, 1994. The Member States decided however to create a transnational European Monetary Institute (EMI), provided for under Article 117 (ex article 109f) of the TEC, as the monetary policy in stage two was still competence of the Member States. This institute was a predecessor of the European Central Bank (ECB), although it did not possess all the powers the ECB would later on be endowed with.

The third stage of the EMU, consisting of the introduction of the single currency, the euro, began on January 1, 1999, the date fixed as the latest possible one under the Maastricht provisions.[64] From that stage onwards, the euro unit and the national currency units were units of the same currency. There was no need to amend the EMU provisions under the Amsterdam Treaty, as important regulations were already approved under the Maastricht Treaty. Regulation 1103/97[65] contains the first provisions relating to the introduction of the euro and was further elaborated by regulation 974/98.[66] Regulation 974/98 clearly states:

> Whereas whenever under Article 109k(2) of the Treaty a Member State becomes a participating Member State, the Council shall according to Article 109l(5) of the Treaty take the other measures necessary for the rapid introduction of the euro as the single currency of this Member State; (5) Whereas according to the first sentence of Article 109l(4) of the Treaty the Council shall at the starting date of the third stage adopt the conversion rates at which the currencies of the participating Member States shall be irrevocably fixed and at which irrevocably fixed rate the euro shall be substituted for these currencies. ...
>
> Article 2. As from 1 January 1999 the currency of the participating Member States shall be the euro. The currency unit shall be one euro. One euro shall be divided into one hundred cent.[67]

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[62] See EC Bulletin, Supp. 11.

[63] See, e.g., Council Decision 90/141, 1990 O.J. (L 078).

[64] The term "euro" does not appear anywhere in the Treaty. At the European Council in Madrid in 1995, the generic term "ECU", used by the Treaty, was replaced with "euro". In accordance with Article 109g of the TEC and with regulation 1103/97, 1997 O.J. (L 162), the euro has replaced the ECU (in a one to one relation) from January 1, 1999 onwards and has become the unit of account of the institutions of the European Communities and the unit of account of the European Central Bank.

[65] See Council Decision 1103/97/EC, 1997 O.J. (L 162) 1.

[66] See Council Decision 974/98/EC, 1998 O.J. (L 139).

[67] Id.

Regulation 975/98 provides for the denominations and technical specifications of euro coins intended for circulation.[68] Regulation 2866/98 contains the conversion rates between the euro and the currencies of the Member States adopting the euro.[69] More detailed provisions have been elaborated by the ECB.[70]

The third stage of the EMU was completed by December 31, 2001, as was decided at the European Council in Madrid in December 1995. On that date, and thus after a transitional period of three years, euro notes and coins were introduced as legal tender:

> Article 10. As from 1 January 2002, the ECB and the central banks of the participating Member States shall put into circulation banknotes denominated in euro. Without prejudice to Article 15, these banknotes denominated in euro shall be the only banknotes which have the status of legal tender in all these Member States.[71]

This means that the 87 national bank notes and the 102 national coins of the twelve euro countries, being all EU Member States with the exception of Denmark, Sweden and the United Kingdom, were replaced as legal tender by the seven euro notes and the eight euro coins.[72] As far as the coins are concerned, however, it must be noted that these will have a common tail and a national head and that there could thus *de facto* be 120 variations of the euro coin.[73]

The introduction of the single European currency is without any doubt a crucial landmark in the history of European integration. The participating countries have legally renounced their national currency in favor of the euro. The euro countries have ceased to have monetary jurisdiction. As of January 1, 1999, they are dependent on the measures ordered by the European authorities in the shape of the ESCB (European System of Central Banks).[74] The ESCB is composed of the ECB (European Central Bank) and the national central banks. The ECB has legal personality (Article 107 of the TEC) and is fully independent (Article 108 of the TEC). Article 106 of the TEC moreover clearly provides that:

> 1. The ECB shall have the exclusive right to authorise the issue of banknotes within the Community. The ECB and the national central banks may issue such notes. The banknotes issued by the ECB and the national central banks shall be the only such notes to have the status of legal tender within the Community.
> 2. Member States may issue coins subject to approval by the ECB of the volume of the issue. The Council may, acting in accordance with the procedure referred to in Article 252 and after consulting the ECB, adopt measures to harmonise the denominations and technical specifications of all

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[68] See Council Decision 975/98/EC, 1998 O.J. (L 139).

[69] See Council Decision 2866/98/EC, 1998 O.J. (L 359).

[70] See Compendium: cdlection of legal instruments (June 1998 - May 1999), available at http://www.ecb.int/pub/pdf/legalcomp99en.pdf.

[71] See Council Decision 974/98, supra note 66.

[72] See http://www.ecb.int/pub/pdf/legalcomp99ed.pdf for the design.

[73] Taking into account that emission rights were accorded to the Vatican, to San Marino and to Monaco (on the basis of agreements negotiated by Italy and France on behalf of the European Community), in reality 120 different euro coins will be used as legal tender in the euro zone.

[74] See TEC arts. 105-111.

> coins intended for circulation to the extent necessary to permit their smooth circulation within the Community.

The primary objective of the ESCB is to maintain price stability. The basic tasks to be carried out through the ESCB are:

> - To define and implement the monetary policy of the Community;
> - To conduct foreign exchange operations consistent with the provisions of Article 111;
> - To hold and manage the official foreign reserves of the Member States;
> - To promote the smooth operation of payment systems.[75]

The ESCB has in principle no competence with regard to exchange rate policy. Only when the Council fails to decide upon the exchange rate or fails to give orientations (TEC art. 111 (ex art. 109)), does the ECB become competent. The Economic and Financial Council of Ministers of the EC can, however, use its competence pursuant to Article 111 of the TEC and enter into international agreements about the exchange rate for the euro in relation to non-Community currencies as the euro-12 Council. In practice, of course, the interest policy of the ECB will have a certain bearing on the attractiveness of the euro, which could in turn influence the stability of the exchange rate. It is also a fact that a certain tension exists between the independent monetary policy of the ECB and the economic and international exchange rate policy of the euro-12 Council, composed of the Ministers of Finance and Economic Affairs of the twelve euro countries. This tension may also be explained from the fact that a number of Member States are having difficulty accepting that their national monetary jurisdiction has come to an end and are unwilling to relinquish their seats on the IMF or G7 to the ECB.

The euro is a single currency, not a common currency, and reflects a far-reaching policy of European integration. The chosen option was not monetary convergence based on a multilateral public international law agreement in which states participate in the currency's management on the basis of sovereign equality.[76] Instead, the euro has been incorporated into the Community and is inextricably bound to the European legal order. Community rules applied by Community organs are in place for the supporting monetary policy regarding the euro. To the extent that national monetary authorities participate in the managing organs with respect to the euro, they must apply Community rules and exclusively serve the interests of the Community. Having established this, however, does not mean that the measures regarding the counterfeiting of the euro are also by definition part of Community policy.

VI. COUNTERFEITING OF THE SINGLE EUROPEAN CURRENCY: LEGAL FRAMEWORK

With the introduction of the euro as a single currency for the euro-zone and as a potential worldwide transaction and reserve currency, the security of the euro and the

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[75] TEC art. 105(2).

[76] Unilateral forms of monetary convergence, such as dollarization or currency boards were never options.

trust in the euro is of fundamental interest. In the design of the coins and notes, counterfeiting has, of course, been taken into account. Nevertheless, the operation comes with a number of inherent counterfeiting risks. First of all, the public is not yet familiar with the novelty of the designs of the new bank notes and coins. Secondly, the euro coins have a common tail and national heads, implying that 120 variations on the euro coin are in circulation at any given time within the euro zone. Thirdly, the notes and coins of course have legal tender status throughout the entire euro zone, transcending the current territorial limits within which national bank notes are used. Fourthly, it is probable that the high denominations of euro notes (500 euro) will be an attractive currency worldwide as cash money. On the other hand, in several countries the denominations of 100 euro and more are not accepted in the retailing sector, because of the possible risk of counterfeiting. Moreover, misuse could be made of fancy bank notes, monetary tokens and bank notes denominated in euro that are without legal tender status, produced and used with the *bona fide* purpose of familiarizing the public with the new single currency. In short, in the periods following the date of issuance of the euro bank notes and coins, there is an increased risk for counterfeiting compared to the period in which only national currencies were used. The risk of counterfeiting is not limited to the euro bank notes and coins, since the former national bank notes and coins, although they have lost their status as legal tender, can be exchanged in the years to come for euros at the National Central Banks.

It is very interesting to see that in the U.S., there is a real concern about the demand for euro notes worldwide. In a statement to the Congress by a representative of the Federal Reserves Systems, it is underlined that the USD will remain a global currency and that the euro can only challenge this position fairly gradually.[77] However, two specific factors could disadvantage the USD - the role of high-denomination notes in commerce and the perception of security against counterfeiting. In the U.S., the $100 note remains the highest denomination. Experiences with notes of $500, $1000, $5000 and $10,000, primarily for interbank transactions, were finally stopped in 1969 and not reintroduced in 1996 with the new-design notes. The costs saving of bigger bank notes were not found to be proportional to the risks of money laundering, tax evasion, organized crime, etc. The fact that a 500-euro note has been issued might be an attractive factor for legal, and certainly for underground, commerce. The discussion about issuing $500 notes is thus open again in the U.S. It is also clear from the Federal Reserve statement that the U.S. authorities are impressed with the anti-counterfeiting features of the euro design of the notes. In the Statement is spelled out: "(a) the interagency committee on Advanced Counterfeit Deterrence is seriously studying further possible design improvements, especially for the $100 note and $50 note, and (b) if the $500 note were issued again, it would have to be seen as highly secure in order to be accepted."[78]

However real the concern might be, the fact that the European Union has opted for a monetary union with a single currency, incorporated in the European Community and inextricably bound to the European legal order, does not mean that the enforcement aspects regarding the euro have also been transferred to the Community or Union level. There is no federal "jurisdiction to enforce" in the sense of the U.S. tradition. The ECB

[77] Statement of Theodore E. Allisson, 84 Federal Reserve Bulletin 12, 1054 (1998).

[78] Id.

is also aware of this:

> The ECB has the exclusive right to authorise the issue of banknotes within the euro area. It does not follow automatically, however, that imposing sanctions on the counterfeiting of such banknotes would be a Community competence. Counterfeiting provisions form part of criminal law, not monetary law. There is no general competence of the Community in the field of criminal law, which is an area falling within the competence of the Member States. The Community is based on the principle of limited powers in the sense that Community institutions only possess those powers conferred upon them.[79]

In conformity with the tradition in European integration, the Member States are primarily responsible for the enforcement of European policy and this is no different where the monetary union and the single currency are concerned.[80] Still, there was awareness in Europe that simply replacing the Deutsche mark, the Italian lire, the French franc, etc., with the euro in the national legislations on enforcement would not be sufficient. Regulation 974/98 already provides in Article 12 that: "Participating Member States shall ensure adequate sanctions against counterfeiting and falsification of euro banknotes and coins."[81]

In 1998, the ECB published a Recommendation regarding the adoption of certain measures to enhance the legal protection of euro bank notes and coins.[82] This recommendation is addressed to the Council of the European Union, the European Parliament, the European Commission and the Member States. The ECB, as an entity bearing responsibility for the new currency, indeed has the power of recommendation, including the recommendation of actions in the field of (criminal) enforcement. The Recommendation contains several interesting provisions, including the fact that Member States and the Community should discourage and strictly control the issuance, holding and use of non-legal tender euro bank notes and coins, in particular prior to January 1, 2002.[83]

The most interesting recommendations concerning the counterfeiting issue are the following:

> 4. The Council of the European Union, the European Commission and the Member States should consider a review of current policies to combat counterfeiting, with the aim of establishing such a campaign as a matter of common interest, evaluating the need for harmonisation of penal laws in the field of counterfeiting, achieving increased institutional, judicial and police cooperation, drawing up new conventions to this end, seeking to strengthen coordination with non European Union governments and organisations, analysing the new technological means available for counterfeiting banknotes and carrying out or considering any other possible measures.

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[79] See Report on the legal protection of bank notes in the EU Member States, point 5, at http://www.ecb.int/pub/pdf/bnlegal.pdf.

[80] See Compliance and Enforcement of European Community Law, supra note 1.

[81] Council Decision 1103/97/EC, 1997 O.J. (L 162) 1.

[82] See ECB/1998/7. See Compendium: collection of legal instruments (June 1998 May 1999) at http://www.ecb.int/pub/pdf/legalcmp99en.pdf.

[83] See id.

> 5. Consideration should be given to organising cooperation between national police forces in the field of the forgery of money and means of payment, either through the European Police Office (Europol) or the European Commission, and to involving the ECB in such tasks.
> 6. The European Commission and the Member States should consider proposing any legal measures necessary to ensure that counterfeit euro banknotes are retained, when detected, by credit institutions and other entities receiving and handling cash, and subsequently handed over to the appropriate law enforcement authorities.
> 7. Community legislation should be considered which would make compulsory the installation of technical devices in colour copiers and machinery capable of graphic reproduction - whether manufactured in the Community or imported from outside - that would permit the identification of banknotes and impede their reproduction.[84]

In November 1999, the ECB published a very interesting Report on the legal protection of bank notes in the EU Member States.[85] As regards counterfeiting,the ECB concluded that all Member States do indeed protect bank notes which are legal tender in their country, as well as foreign bank notes which are legal tender in other countries, thereby complying with Article 5 of the Geneva Convention. The result is that euro bank notes will be protected by existing legislation concerning counterfeiting in all Member States participating in the EMU as well as in the non-participating Member States. Concerning the criminal offenses and penalties, the ECB concludes that there is substantial similarity in national laws concerning the lists of acts that constitute the offense of counterfeiting. The offense of counterfeiting covers mainly the following acts:

> - The duplication and falsification (alteration of value) of bank notes, today mostly by using (sophisticated) technical devices such as colour copying and scanning machines;
> - Putting falsified money into circulation as genuine;
> - The possession, procurement or transportation of counterfeits; and
> - The manufacture and distribution of devices for the production of counterfeits.

Counterfeiting is punishable in all Member States by imprisonment.[86] The terms of such imprisonment are quite different, but the ECB concluded that "serious cases of counterfeiting entail long-term imprisonment in all Member States. ... In addition, there is the possibility of imposing fines in most Member States."[87] The ECB underlined that there are no "counterfeiting havens" within the Community.[88] It is however surprising that the ECB did not deal with minimum penalties, as these give a very wide range to the sentencing policy for the criminal judiciary. However, the rather positive conclusion of the ECB does not mean that the ECB argued in favor of maintaining the status quo:

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[84] See id.
[85] See ECB Report, supra note 79.
[86] See id.
[87] Id.
[88] Id.

> According to the Treaty on European Union, the legislative authority in the field of criminal law remains within the Member States. However, given the fact that the euro has become a common currency throughout the participating Member States, further improvements in combating currency counterfeiting should be envisaged at the Community level. ... At present, each Member State has at its disposal a detailed national system of penalties for offences that is already well established and considered to be sufficient for the protection of banknotes in the country concerned. However, taking into account the fact that in each country these penalties are incorporated in a comprehensive and balanced penal law system, there is room for widening the scope of criminal law protection in the field of counterfeiting by means of a Community instrument (convention). Such an instrument could contribute to the determination of minimum common elements that would constitute the crime of counterfeiting in all Member States. It could also encompass a common criminal law approach concerning new forms of counterfeiting (for example, the use of computer technology).[89]

So the ECB concludes that, although the legal situation in the Member States with regard to the substantive criminal law aspects of counterfeiting is reasonably satisfactory, the Member States' legal framework should be further harmonized. A Convention under Title VI of the TEU (provisions in the fields of Justice and Home Affairs) would be, in the view of the ECB90, the best way to achieve this harmonization. Specifically, credit institutions should be obliged by law to detain counterfeit bank notes, as such measures are currently lacking in ten Member States.[91]

Fortunately, the ECB does not limit its analysis to substantive criminal law aspects. The ECB is well aware that the investigation and prosecution of counterfeiting have to be taken into account when evaluating the potential scope of the counterfeiting of euro bank notes. The ECB makes a distinction between arrangements at the level of the ECB and horizontal co-operation between the national authorities of the Member States. Concerning the supranational arrangements at the ECB level, the ECB underlines that traditionally, national authorities store information concerning counterfeit bank notes and coins. However, the Governing Council of the ECB felt the need for supranational arrangements and in 1999 it approved a Guideline on certain provisions regarding euro bank notes.[92] This guideline provides for the establishment at the ECB level of the Counterfeit Analysis Centre (CAC) for bank notes and the European Technical and Scientific Centre (ETSC) for coins and of the Common Currency Database for counterfeit bank notes and coins. "The CAC and the Common Currency Database shall co-operate with the police forces of the participating Member States and with Europol or the European Commission regarding their respective areas of expertise." The information input comes from the responsible national authorities and from the National Analysis Centre (NAC)/Coins National Analysis Centre (CNAC). "The information obtained [could be] shared with the national central banks (NCB), with the police, and in the case of the coin counterfeits, with the Mints." The objective of the common

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[89] Id.

[90] The proposal for a Convention is in line with the practice under the Maastricht TEU, but under the Amsterdam TEU the framework decision became the main legal instrument in the third pillar for harmonizing the criminal law of the Member States.

[91] See ECB Report, supra note 79.

[92] See ECB/1999/3.

database is limited to knowledge and expertise concerning counterfeits and must be clearly distinguished from databases required for police work or criminal investigation and prosecution.

As a means of horizontal co-operation between the national authorities of the Member States, the ECB examined Schengen, Interpol, Europol and the European Commission.[93] The ECB at present does not consider the Schengen Agreements, which contain specific provisions on police and judicial co-operation in criminal matters and which have meanwhile been included in the structure of the EU, a sufficient means of preventing and detecting offenses in the field: not all EU Member States are parties to the Schengen Agreements and the provisions are not sufficiently specific, requiring the implementation of further measures.[94] Interpol, as a private organization responsible for mutual police assistance, might serve as an appropriate forum for combating counterfeiting offenses in relation to non-EU countries, but issues related to counterfeiting the euro would require a different arrangement for co-operation between participating Member States. As far as Europol is concerned, the ECB underlines the extension of Europol's mandate to include the fight against the forgery of money and means of payment.[95] Here, however, the ECB refers to Article 12 of the Geneva Convention, which states that "in every country ... investigations on the subject of counterfeiting should be organised by a central office." In conclusion, the ECB made a very interesting statement:

> Within the meaning of the Geneva Convention, "country" is regarded as synonymous with "currency" in the above context. If this is applied to the future situation in the countries participating in Stage Three of EMU, it becomes obvious that the exchange of information and the organisation of co-operation between national law enforcement agencies may not be sufficient to suppress the counterfeiting of the euro. Therefore, the possibility should be considered of entrusting Europol not only with the collection and redistribution of data an the analysis of the information, but also with the authority to initiate and co-ordinate criminal investigation at the European level ... Therefore, legal provisions should ensure that Europol will be provided with all relevant information and that its role in relation to other supranational bodies, e.g. Interpol, the European Commission and the ECB, is legally established, thus specifically including all aspects of mutual co-operation and exchange of information.[96]

In other words, the ECB is arguing in favor of giving Europol, at least for the counterfeiting issue, the functions of an operational, executive police force, which can

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[93] See ECB Report, supra note 79.

[94] Council Decision 10/07/EEC, 1999 O.J. (L 176). The Schengen treaties were originally developed outside the structure of the Community and of the Union, at the initiative of five Member States (Belgium, Luxembourg, Netherlands, France and Germany). They were integrated in the structure of the European Union under the Treaty of Amsterdam, with a transition period of five years. Meanwhile, the Schengen countries have come to include all Member States, with the exception of Ireland and the United Kingdom.

[95] Council Decision 28/05/EEC, 1999 O.J. (C 149). In principle, Europol deals with preventing and combating terrorism, unlawful drug trafficking and other serious forms of organized crime. However, according to Article 2 (2) of the Europol Convention 27/11, 1995 O.J. (C 316), the Council of the EU, acting unanimously, can decide to instruct Europol to deal with other forms of crime listed in the Annex to the Convention, one of which is forgery of money and other means of payment.

[96] ECB Report, supra note 82, at p. 15.

initiate and co-ordinate criminal investigations and which should be recognized as requesting authority for mutual assistance in the EU. At the moment, Europol's mandate is limited to the exchange of information/intelligence and its analysis.[97] Europol has neither operational powers, nor judicial investigative powers (such as the power to inspect, to search, to seize, etc.).

Concerning the European Commission, the ECB adopts a low-profile approach and refrains from issuing strong recommendations. The role of the Commission, in the eyes of the ECB, should be ancillary to the activities of the ECB and Europol. No reference is made to the anti-fraud office of the European Commission (OLAF), which has substantial investigative powers in the administrative field.[98] The ECB concludes with a clear warning:

> [C]larification of the respective responsibilities of the institutions involved in the fight against the forgery of money and means of payment should also be sought. A multiplicity of instruments and competent authorities can enhance the risk of inefficiency of action, lack of effective co-ordination and, sometimes, pernicious competition between competent authorities.[99]

While the ECB has already organized the technical side and the information exchange concerning the technical side issues (i.e., knowledge about counterfeit bank notes and coins), the ECB refers here to enforcement co-operation between police and judicial authorities. It is clear that there is a necessary link between technical bank information and classic enforcement information and that there is a need for the exchange of information between the financial authorities on the one hand and the enforcement authorities on the other.

Although the ECB was not so negative about the *status questionis*, it still argued in favor of common objectives, harmonization of the offenses and sanctions, increasing co-operation between the European and national monetary institutions and increasing co-operation between police, judicial authorities and European law enforcement agencies.[100]

The European Commission did not wait for the Report of the ECB and in July 1998, it issued a communication to the Council, the European Parliament and the ECB.[101] The Commission based its view on the activities of a working group on the forgery of currency.[102] In this working group, the European Commission met with specialized police representatives from Member States, and with representatives from Interpol and Europol.[103] The European Commission defined its role as complementary to those of the ECB and Europol. The Commission also accepted the need for a third pillar instrument when it comes to harmonization of offenses and sanctions and to specific provisions concerning judicial co-operation in criminal matters. The European

[97] Europol Convention 27/11, 1995 O.J. (C 316) art. 3.
[98] See Vervaele, supra note 11, at 33146.
[99] Id. at 16.
[100] See ECB Report, supra note 82.
[101] See COM (1998) 474 final.
[102] This working group was established in January 1998 at the COCOLAF, the "Comité de Coordination de la Lutte Anti-fraude," a committee based at the European Commission, composed of governmental experts from the Member States.
[103] See reports SEC (1998) 624 and SEC (1998) 2248.

Commission underlined the need for a Community structure for the collection and exchange of information concerning counterfeiting of the euro. A global and integrated enforcement policy is in need of frequent exchanges between the national and European monetary institutions (NAC/CNAC - CAC/ETSC) and the national and European law enforcement agencies (police, judicial authorities, Europol, OLAF, Interpol). Such a structure should be provided for under a Community regulation, based on Article 123(4) (ex Article 109L(4)) and/or Article 308 (ex Article 235) of the TEC.[104] The regulation should cover all of the following areas:

> - ... Define all the activities which go together to make up currency counterfeiting and falsification to allow for a homogenous exchange of information;
> - The Member States must be required to pass on all relevant information concerning counterfeiting and forgery of the euro;
> - A computerised system compromising an e-mail network and a central data base, with direct access for the national authorities, should be set up. The purpose ... would be to prevent, detect and prosecute currency counterfeiting; it should therefore contain strategic, operational and appropriate legal data ...;
> - There must be rules governing the arrangements for exchanges of information (and access to data bases) with Community or Union bodies, international organisations (Interpol) and non-member countries ... ;
> - There must be rules governing protection for personal data ... ;
> - Commercial banks and financial institutions should be obliged to report any instances of fraud they detect to the competent authorities, on pain of administrative penalties where appropriate.[105]

It is clear from the proposal that the Commission claims a substantive, significant role for the Commission and for OLAF concerning prevention and data exchange in relation to euro counterfeiting, a role much greater than the one outlined in the recommendation of the ECB. The European Commission and OLAF wish to act as a bridge between technical monetary co-operation and law enforcement co-operation in the field, with the central data bank on counterfeiting situated at the Commission's headquarters.

The first legislative initiative began in the third pillar. In November 1999, Germany introduced a proposal for a Council Framework Decision[106] on increasing protection by penal sanctions against counterfeiting in connection with the introduction of the euro.[107] The purpose of the Framework Decision was to supplement the provisions of the 1929 Geneva Convention, to which all the Member States should accede (Article 2(2)). This is in line with the Resolution of the Council, in which the Geneva Convention was qualified as a common minimum standard for all Member States of the European Union regarding protection by penal sanctions against counterfeiting.[108] The Framework

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[104] The equivalent of the Necessary and Proper Clause in the U.S. Constitution

[105] COM (1998) 474 final, p. 11-12.

[106] Framework Decisions were introduced as a third pillar instrument by the Treaty of Amsterdam; they can be compared with directives in the first pillar, having the purpose of approximation of the laws and regulations of the Member States. As directives, they are binding upon the Member States as to the result to be achieved, but they leave to the national authorities the choice of form and methods. They are binding without any ratification. However, framework decisions cannot entail direct effect (Art. 34 TEU).

[107] See Council Decision 10/11/EEC, 1999 O.J. (C 322).

[108] See Council Regulation of May 28, 1999 on increasing protection by penal sanctions against

Decision was adopted on May 29, 2000. It contains in Articles 3-5 a specific list of offenses, which goes beyond the offenses provided for under the 1929 Geneva Convention, and that should be integrated in the criminal law systems of the Member States. Reference is made to modern computer techniques and the manufacturing of legal tender by use of legal facilities, but without the agreement of the issuing authorities is made into an offense. Another newly created offense is the forgery of currency not yet issued but designated for circulation, in order to be able to punish offenses committed before January 1, 2002. The Framework Decision also goes beyond the 1929 Geneva Convention in its conclusion of provisions on sanctions. The offenses must be punishable by effective, proportionate and dissuasive criminal penalties, including penalties involving deprivation of liberty that can give rise to extradition (Article 6). The harmonizing effect of Article 6 is however limited, as all Member States already have this type of sanction. They must still provide it only for the offenses under Articles 3-5. Liability for legal persons (Article 8) and sanctions for legal persons (Article 9) are also provided for, although the Framework Decision refrains from imposing criminal sanctions on legal persons, referring to criminal or non-criminal fines. It is very important that Article 7 provides for jurisdiction irrespective of the nationality of the offender and of the place where the offense has been committed. This means that all euro Member States have universal jurisdiction with respect to counterfeiting. Member States must co-operate in case of conflicting jurisdiction and try to centralize the prosecution in a single Member State where possible. What is remarkable, however, is that no provision is included on counteracting double jeopardy (*ne bis in idem*), which would seem advisable when dealing with concurring and competing jurisdictions. It is also quite noteworthy that the Framework Decision is nearly silent on judicial co-operation in criminal matters. For this reason, in December 2000, France launched an initiative with a view to the adoption of a third pillar Council Decision,[109] completing the framework Decision of May 29, 2000.[110] The draft Decision contains the obligation for the national NAC/CNAC and for the national Article 12 central offices (of the Geneva Convention) to communicate information to Europol. The central offices must communicate relevant information on criminal investigations, including the particulars of the dossier, the particulars of the forgery, the *modus operandi*, the context of seizure, etc., even if the information came from third countries (Article 4). It is interesting that besides Europol, Article 4(3) mentions Eurojust as well, a co-ordination unit for the judicial authorities within the EU. Eurojust was introduced, in addition to Europol, in Articles 29 and 31 of the Treaty of Nice:

> The competent authorities of the Member States shall exchange with the Provisional Judicial Cooperation Unit and subsequently with Eurojust ... all relevant information concerning criminal investigations in order to help to establish the facts and ensure effective action against counterfeiting of the euro. Europol and Eurojust shall provide the competent authorities of the Member States with all necessary technical assistance in order to facilitate coordination of investigation undertaken and to improve and facilitate

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counterfeiting in connection with the introduction of the euro, 18/06/EEC, 1999 O.J. (C 171).

[109] Council Decisions can be adopted for any other purpose consistent with the objective of the Treaty, excluding any approximation of the laws and regulations of the Member states.

[110] See Council Decision 07/03/EEC, 2001 O.J. (C 75).

> cooperation between the competent investigative and prosecuting bodies of the Member States.

Finally, the draft Decision in Article 5 recognizes the *ne bis in idem* rule for previous convictions for counterfeiting offenses,[111] but this provision was recently removed and is now the subject of a draft Council Framework Decision on amending the Council Framework Decision of May 29, 2000, introducing a new Article 9a including the *ne bis in idem* principle for previous convictions.[112]

On the other hand, Europol should, in keeping with the provisions of the Europol Convention, exchange technical, strategic and operational data on counterfeiting of the euro with the competent national authorities, in particular the national Article 12 central offices. The Council proposes draft Council conclusions along those lines. The draft Council conclusions also refer to the agreements between Europol/ECB, Europol/Commission (OLAF) and Europol/Interpol.

In the framework of the first pillar, the Commission in July 2000 proposed a draft regulation based on Article 123(4) and Article 308 of the TEC, dealing with:

- The processing of technical information;
- The processing of operational strategic data;
- Co-operation and mutual assistance.[113]

Relevant national authorities are defined as a combination of the relevant national and European monetary authorities and the relevant national law enforcement authorities, including the ones responsible for prosecution and punishment. They should all have access to the databases of the ECB. The draft regulation also imposes on the credit institutions the obligation to withdraw all counterfeit euro notes and coins, and this obligation must be enforced by effective, proportionate and dissuasive penalties (not necessary criminal sanctions).

Article 7 is noteworthy in that it provides for a special unit to combat euro counterfeiting:

> 1. The Member States shall ensure that a Unit to combat euro counterfeiting (the "Unit") is set up by Europol and managed as a Europol administrative entity.
> 2. The Unit shall manage a system for the exchange, gathering and analysis of operational and strategic information within the Europol information system.

The Unit would be set up (Article 10) as the centralized office, to which all the national central offices referred to in Article 12 of the 1929 Geneva Convention would have to transmit all detected cases of euro counterfeiting, beginning with the first administrative or judicial record. This Unit *inter alia* has the task (Article 8) of co-operating with the ECB and the European Commission, including giving the ECB and the European

[111] Proposal for a Council Regulation on the Protection of the euro against counterfeiting, Eurlex, doc. 500PC0492.

[112] This is in line with the philosophy of a Framework Decision, aimed at harmonizing the national provisions.

[113] Eur-Lex, Document 500PC0492.

Commission every opportunity to consult the Unit's system for the exchange, gathering and analysis of operational and strategic information on a permanent basis. Moreover, the Unit should assist the relevant authorities in the Member States and non-member countries, on request or on its own motion, in the exercise of their tasks of preventing and combating euro counterfeiting. Whether this also includes operational and/or judicial investigative tasks is not clear. However, in the commentary on the draft, the Commission underlines that the Unit should have an independent European status in Europol, excluding the liaison officers of the national units.[114] The draft regulation concludes with a rather weak chapter on co-operation and mutual assistance, *de facto* limited to a system of early warning.

The formulation of the draft regulation in any case gives rise to the legal question whether it is possible to confer powers on Europol (third pillar) through a Community regulation (first pillar). Could the national central units, established in the framework of the 1929 Geneva Convention, be obliged to exchange information through Europol's unit? Could the Unit this way be given a central role in mutual assistance and rapid alert? In any event, this is not possible directly, but the question remains whether such an obligation could be imposed on the Member States. It is, after all, the Member States who can amend the Europol convention and it is clear that a regulation may impose binding obligations on Member States. The problem is, however, that failure to comply with these obligations could result in a violation of the Treaty and thus to infringement proceedings with the application of Article 226 of the TEC. Embedding Europol in a regulation could also give rise to competing provisions concerning the ECJ competence in the first pillar and in the third pillar. Another problem is that the competences relating to police co-operation may be part of Article 61 of the TEC and as such, part of the area for freedom, security and justice,[115] but they belong to the third pillar competence. It seems improbable, therefore, that it would be possible under the current Treaty to confer on the Member States competences, which have an impact on the organization and powers of Europol, by means of a regulation. To render this possible, a reformulation of Article 10 of the TEC seems necessary with respect to EU loyalty, together with a reformulation of the provisions concerning the area for freedom, security and justice.

It is clear from the negotiation process and from the further drafts of the proposal for a Council regulation that the scope of the regulation was narrowed and that the co-ordination (including exchange of information) between technical monetary authorities and law enforcement authorities (investigative and prosecutorial) was excluded from its provisions. The provisions on the central Unit (the former Article 7) were also dropped. The final draft of the regulation of February 2001 underlines in the recital that, with strict regard to their respective competences, Europol and the European Community should establish forms of co-operation. Article 1(3) also provides that "this draft regulation shall apply, without prejudice to the application of national criminal law, to the protection of the euro against counterfeiting."[116] In the final draft regulation, Articles 3-5 provide for the exchange of information between the CAC/ETSC at the

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[114] The independent status should guarantee that the Unit can work in a fully autonomous way and that it can remain separate from the so-called Eurodesk, the national units working within Europol. For the structure of Europol, see the Europol Convention, Arts. 4 and 5.

[115] See Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area for Freedom, Security and Justice, Doc. nr.: 13844/98.

[116] The wording derives from TEC art. 280, as amended in the Treaty of Amsterdam.

ECB and the NAC/CNAC in the euro states. Article 6 contains the obligation of the credit institutions to withdraw from circulation all euro notes and coins which they know or have sufficient reason to believe to be counterfeit, an obligation that must be enforced by effective, proportionate and deterrent sanctions. Chapter 4 (Articles 7-9) deals with co-operation and mutual assistance. The regulation opts for specific agreements between the ECB/Europol and between the European Commission/Europol.[117] It is also clear that Article 8 opts for the exchange of information between the national central office (based on Article 12 of the 1929 Geneva Convention) and Europol, through the Europol national unit (Eurodesk). The national central office obtains the information from the national monetary authorities and from the national law enforcement agencies. How the exchange of information concerning law enforcement matters and the mutual assistance will be elaborated has been entirely left to the agreements to be drawn up. The draft regulation is based on Article 123(4) of the TEC alone and contains, in Article 12, the provision that Articles 1 to 11 of the Regulation shall have effect in those Member States that have adopted the euro as their single currency (the "ins"). Furthermore, another draft regulation, based on Article 308 of the TEC, imposes these same obligations on those Member States that have not adopted the euro as their single currency (the "pre-ins"). Here, too, it may be asked whether this was necessary. After all, a regulation is directly applicable in all Member States, even in the Member States that do not participate in the euro zone.[118] The main reason for a separate regulation might have been that Member States not participating in the euro zone should, by the application of Article 308 of the TEC, have the possibility of vetoing measures necessary for the protection of the euro against counterfeiting, which would be a violation of Article 123(4) of the TEC.

The final drafts of the two regulations have been voted under the Swedish Presidency in June 2001.[119] From a comparison of the original to the final draft of the regulation, it becomes clear that the functions of the European Commission/OLAF have been reduced to:

- Legislative initiatives in the first and the third pillar;
- Training and financial support;
- Providing support to the Member States, in particular in the implementation of the law;
- Co-ordination of the technical actions of the Member States with regard to the euro coin counterfeiting.

A proposal for a Council Decision establishing a training, exchange and assistance program for the protection of the euro against counterfeiting ("Pericles" program) based on Article 123(4) of the TEC was made at the beginning of 2001. The target groups are both staff from the monetary institutions/central offices (including the ECB) and from European and national law enforcement institutions. One may wonder whether such limited competences for the European Commission, in particular the fact that there will be no central database installed at the European Commission and that no use will be

[117] In addition, Europol is also negotiating an agreement with Interpol.

[118] See Regulation 2866/98 of December 31,1998 containing the conversion rates between the euro and the currencies of the Member States adopting the euro does also apply to all Member States.

[119] See CJ regulation 1338/2001 and regulation 1339/2001, 04/07/EEC, 2002 O.J. (L 181).

made of the administrative investigative powers of OLAF, is in line with the Council's resolution of December 18, 1997, stating that "the European Commission could also be entrusted with such cooperation between national police forces in the field of the forgery of money and means of payment."[120]

To sum up, law enforcement co-operation rests completely in the hands of Europol, and the central database for legal information relating to euro counterfeiting will also be at Europol. The central database for technical monetary information relating to euro counterfeiting will be at the ECB. Within Europol, an expert group on "forgery of money" has already been active for the last couple of years. Operational specialists from the Member States, the ECB, the European Commission/OLAF and Interpol participate in this expert group. There is no doubt that this Working Group will fulfil a permanent role during the coming years. Although there will not be a European Central Office at Europol in the sense of the Geneva Convention, the unit at Europol that is in charge of the counterfeiting of currency will be busy in the years to come and for this reason, it has also substantially expanded in terms of its personnel. This unit is charged with: the counterfeit databank, the early-warning system, analysis of data and the building up of supportive intelligence (including the (de)coding of sophisticated digital copying systems), assistance and technical assistance in investigations.

VII. CONCLUSION

With the initiatives under the first and third pillars aimed at the protection of the euro, the first steps have been taken with regard to the harmonization of criminal law and operational co-operation (databases and dataflow). The question remains whether the Monetary Union includes the competence to prescribe criminal provisions (harmonization) in the framework of the first pillar. The Member States have given a negative answer and haven chosen harmonization in the framework of the third pillar. Whether the *acquis* satisfies the recommendations of the ECB and whether with this a set of instruments has been created which offers sufficient guarantees to effectively combat counterfeiting is very much open to question.[121] What has been achieved cannot be defined as a global and integrated enforcement policy on the part of the monetary institutions in the ESCB and the national and European law enforcement agencies. Moreover, from the point of view of the legislative process, we can see that there is no integrated cross-pillar approach. Initiatives have come from several Member States and the Commission, while the legislative process reflects the institutional struggle between the first and third pillars. In my opinion, opportunities have been missed in this dossier to provide a co-ordinated and integral interpretation of the area of freedom, security and justice and thereby to establish a link between the area of freedom, security and justice on the one hand, and the EMU on the other. Attempts to this end have been made. In this respect a "euro co-ordination" group has been active in Europol during 2000 and 2001 for the purpose of harmonizing the efforts of the ECB, the European Commission and Interpol in the area of the protection of the euro. In 2001 this "euro co-ordination" group has been replaced by a "Steering Group" for the purpose of elaborating a

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[120] Council Decision 13/01/EEC, 1997 O.J. (C 11).

[121] See point 4 of the ECB Recommendation regarding the adoption of certain measures to enhance the legal protection of euro banknotes and coins (ECB/1998/7). 15/01/EEC, 1999 O.J. (C 11).

common inter-institutional strategy for the protection of the euro against counterfeiting.[122] The "Interinstitutional Steering Group," set up following the high-level meeting of senior management representatives of the European Commission, the ECB and Europol in February 2001, comprises representatives of the European Commission, the ECB and Europol. The "Steering Group" has defined an action plan for a common approach to the protection of the euro against counterfeiting, including training, institutional co-operation, co-ordination with non-EU countries and legislation.[123]

A second point of concern is the operational side of enforcement. Important competences were attributed to Europol in this field, but not the executive, operational competences requested by Europol and the ECB. As far as drugs and money laundering are concerned, in the past it has appeared that for Europol, dealing with police intelligence, it is very difficult to attain usable data in the police field. The question therefore is how Europol can fulfil its mandate in the field of counterfeiting without operational police powers. The agreements between Interpol/Europol, Europol/ECB and Europol/European Commission appear to be at a far-advanced stage of negotiation. However important these agreements may also be, without any substantial alteration to the Europol Convention, Europol is not sufficiently armed in order to enable it to effectively combat the counterfeiting of currency. The agreements are indeed a suitable instrument for the exchange of information and for running a databank. Also with the exchange of technical monetary data, not that many problems are envisaged. The obstacle here is the operational police and judicial information. If this information has to flow from the local law enforcement agencies via the Central Office to Europol, then it seems to me to be a cumbersome, bureaucratic system.

A third point of concern is the establishment of operational enforcement within the territorial space of the euro-zone and/or the EU. In Article 30 (ex art. K2) of the Treaty of Amsterdam, the legal basis was established for the first steps to be taken towards a European Judicial Area.[124] Europol is mentioned in relation to the transnational operational actions of joint investigation teams. The Convention on Mutual Assistance in Criminal Matters 2000 (not yet in force) also refers to joint investigation teams.[125] Europol should also be recognized as a requesting authority for the purpose of police investigations and it should thereby play a role in liaison arrangements between prosecution and investigation officials within the EU. In the Tampere conclusions on the area of freedom, security and justice, milestones were defined for justice integration within the EU, including the mutual recognition of pre-trial decisions.[126] Also mentioned in the Tampere conclusions was Eurojust, a co-ordination unit for the prosecuting and investigating judicial authorities within the EU. Eurojust was introduced, in addition to Europol, in Articles 29 and 31 of the Treaty of Nice. It is clear that the EU is seeking a real script for the elaboration of transnational criminal justice in the EU, taking into account the existing national law enforcement authorities. It is too

[122] The Group is competent to deal with currency counterfeiting as well as with fraud by other means of payment (credit cards, e-payment, checks etc.).

[123] This action plan has not been published.

[124] See European Cooperation between tax, customs and judicial authorities: the Netherlands, England and Wales, France and Germany, supra note 9.

[125] Council Decision 12/07, 2000 O.J. (C 197).

[126] See Presidency Conclusions, 15-16 October 1999.

early, however, for the development of real supranational European enforcement agencies. The EU is looking for formulas by which to operationalize the co-operation between the national law enforcement agencies and by which to extend the radius of its territorial field of action. The fact that the EU has not chosen a EU federal law enforcement agency such as the U.S. Secret Service is for this reason understandable from the point of view of political viability. However, the elaborated instruments for the protection of the euro also do not reflect the transnational script that is embedded in the Amsterdam Treaty and in the Tampere conclusions. Art. 4(3) of France's draft Third Pillar Decision referring to Eurojust is not a real answer to the need for transnational justice in the EU. Moreover, Eurojust does not have any operational powers in the actual definition. Isn't it time to establish a joint investigation team for the counterfeiting of the euro, which is co-ordinated and supported by Europol and linked to a leading Public Prosecutor? This joint investigation team and the leading Public Prosecutor should have competence within the territory of the EU. Only in the case of coercive measures should they have to obtain a warrant from a national or investigating judge. However, such a warrant could have euro-wide recognition. The model elaborated in the Corpus Juris project, with a European Public Prosecutor and national judges of freedom could function as an example.[127] In any case, there must be leadership for law enforcement in the EU area and the law enforcement authorities must have transnational competence beyond the frontiers of the sovereign nation states. The enforcement of the Member States' single currency is too important for it to be left in the hands of the fragmented and limited law enforcement agencies. The enforcement of the euro is an excellent field in which to experiment in European law enforcement "institution building."

The fourth point of concern is operational enforcement in non-EU States, considering the expected growing importance of the euro as a transnational and reserve currency. How is this extraterritorial assistance and enforcement regulated? The regulation laying down measures that are necessary for the protection of the euro against counterfeiting provides in its Article 9 somewhat vague obligations concerning external relations.[128] Art. 9(1) provides a general obligation for the Commission and the Member States to co-operate with non-member countries as well as international organizations, in close co-operation with the ECB. Furthermore, it is stated that "such co-operation shall include the assistance necessary to prevent and combat counterfeiting of the euro, in accordance with the provisions relating to the prevention of unlawful activities contained in co-operation, association and pre-accession agreements." Art. 9(2) imposes an obligation upon the Council to ensure that co-operation, association and pre-accession agreements between the EC and non-member states include an obligation to notify instances of counterfeit notes and coins to the ECB. It remains very unclear how the following will in fact be dealt with:

- The responsibility of credit institutions in third countries concerning the withdrawal from circulation of counterfeit notes and coins;
- The flow of information between monetary and law enforcement institutions;

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[127] See Mireille Delmas-Marty and John A.E. Vervaele, The Implementation of the Corpus Jus in the Member States: Penal Provisions for the Protection of European Finances vol. I-IV (2000-2001).

[128] Council Regulation 18/06/EEC, supra note 108.

- Investigation possibilities in third countries;
- Law enforcement co-operation.

From the introduction of its single currency, the U.S. has chosen a proactive global enforcement strategy against counterfeiting, coupled with the obligation and the duty to use due diligence to prevent this offense against the law of nations. The European approach with regard to extraterritorial enforcement is traditionally much more reserved. The European enforcement powers are much more strictly linked to state sovereignty and public powers. This has as a consequence that in principle, they cannot be deployed outside the territory of the nation state. In the U.S., however, these constraints play much less of a role in the case of coercive measures. All this, however, does not have to mean that we cannot and must not create enforcement interests outside the EU. The Treaty of Amsterdam provides in Article 38 of the TEU that the EU can henceforth conclude agreements with third countries, even in the field of the third pillar, thereby including police and judicial co-operation. Examples in this sense are still forthcoming. Furthermore, by means of trade agreements, within the framework of the Community's external commercial policy (TEC art. 133) or using the necessary clause of Article 308 (ex art. 235) of the TEC, agreements can be concluded with third countries concerning the possibility for EU inspections in third countries by means of euro clauses. Finally, an external enforcement strategy should be negotiated with the Member States. In any event, three points should be given further attention and should be regulated: the flow of information concerning counterfeiting of the euro in third countries, the possibility of (joint-) investigation as well as the possibility for the presence of specialized units in third countries under the responsibility of the EU or, alternatively, working in strict confidence together with the EU. The EU and the Member States should at least decide on a plan for common liaison officers to be present at embassies in third countries.

The euro has in the meantime been in force for more than three years, and from January 1, 2002, has also been in a material form as legal tender. Despite the strong decrease in value against the USD, this introduction is a success for European integration, both from an economic as well as from a political point of view. The enforcement of measures to combat the counterfeiting of the euro is very much a problem child, however. The EU and the Member States are encroaching upon the boundaries of the classical relationships between the nation state versus the Union. The Member States are however still unprepared for taking forceful steps in the direction of justice integration in the EU and the creation of a European judicial space. We cannot yet speak of a true federalization of enforcement in the EU, but it is clear that there is an increasing need for operational justice in the European territory. Member States still do not have the necessary complete faith in each other's systems and remain afraid of the process of federalization, certainly in the area of criminal law enforcement. On the other hand, in specific regulatory areas such as the counterfeiting of the euro, the protection of the EU budget, European securities, etc., there is an increasing need for a European enforcement policy. The history of American federalism, especially in the area of enforcement, is an inspiring example for steps to be taken in the EU. In the European integration model, full federal jurisdiction to prescribe, adjudicate and enforce is certainly not the solution to aim at. Shared models of enforcement between EU and Member States must be developed in network settings, with transnational operational

capacity. However, a network structure needs a leading and responsible body at the European level. Some forms of European regulatory and enforcement agencies have to be developed in years to come. European regulatory agencies without enforcement powers are by far too weak an answer to the pressing social-economic demands heard in Europe, not in the last place from the citizens themselves.