

## ABSTRACT

The reconstruction of Europe accomplished in Maastricht and which continued in Amsterdam has established new outlines in the process of harmonisation of the criminal legislations of the E.U. member states, even in the area of the crimes related to the defence of the environment. In particular, two different juridical proposals have been presented in order to reach a certain level of approximation of the environmental crimes within the European Union: the draft Directive adopted by the Commission on 13 March 2001 and the draft Council Framework Decision 2003/80/JHA of 27 January 2003.

Europe has finally opted for the second one, which has been definitely approved in January 2003.

The choice of the instrument of the framework decision, instead of that of the directive, on the one hand is more compatible with the principle of the rule of law (*nullum crimen, nulla poena sine praevia lege poenali*) in the criminal affairs, since the framework decision does not impose strict obligations of criminalisation on the member states, which otherwise should infringe the principle of legality. However, on the other side, the adoption of a framework decision appears to be a breach of the rules governing the division of powers between the European Community and the Union, considering that the protection of the environment is not included among the third pillar areas which has been subject of criminal law harmonisation measures, according to the provisions of the EU Treaty.

This institutional conflict, pointed out in this paper, has recently been raised by the Commission before the Court of Justice.

While waiting for the pronouncement of the European Court, it is still believed that the third pillar remains the proper place for the harmonisation of the national criminal legislations, at least, until when the power to make new criminal offences is not entirely attributed to the European Parliament, the only body which truly represents the will of Union citizens.

In this respect, no real substantial changes will come from the European Constitution which does not attribute to the Parliament an effective power of harmonisation of the criminal law, without solving, in such a way, the crucial problem of the lack of democracy of the European legislative process. Moreover, the new Constitution replaces the framework decision with a new legislative juridical instrument, the "European framework law", similar to the old directive. This European framework law, by imposing an express obligation of criminalisation on the member states, will definitely collide with the criminal principle of legality and with the case law of the Constitutional Court (Corte costituzionale) which has traditionally deplored the excessive flexibility of the above mentioned principle.