



**EUROPEAN CENTRAL BANK**

**OPINION OF THE EUROPEAN CENTRAL BANK**

**at the request of the Spanish Ministry of Economy and Finance under Article 109f (6) of the Treaty establishing the European Community (the “Treaty”) and Article 5.3 of the Statute of the EMI on a draft law on the Introduction of the euro (“Umbrella law”).**

**CON/98/31**

1. On 8 June 1998 the ECB has received a request from the Spanish Ministry of Economy and Finance, through the Banco de España, for an opinion on a draft law on the Introduction of the euro (“Umbrella law”).
2. In accordance with Article 109l (2) of the Treaty, the ECB has taken over the advisory functions of the EMI which has gone into liquidation upon the establishment of the ECB on 1 June 1998. The ECB’s competence to deliver an opinion is based on Article 1.1 of the Council Decision (93/717/EC) of 22 November 1993 on the consultation of the EMI by the authorities of the Member States on draft legislative provisions, as the Umbrella law contains rules which, in the context of national change-over legislation, deal with provisions that concern monetary law and have an impact on financial markets and, thus, fall within the consultative competence of the ECB.
3. The aim of the Umbrella law is to supplement the EU Council Regulations 1103/97 of 17 June 1997 and 974/98 of 3 May 1998, concerning the introduction of the euro, providing with the adaptations of the national monetary system to the new situation, setting out general principles and rules applying to the changeover, during the transitional period, and at the end of the transitional period. It contains provisions regarding the relationship between the two currency units in the areas of accounting and reporting, re-denomination of the capital of companies, adaptations in the domain of administrative contracts and payments, taxation and social security rules, consumer protection and fixing of exchange rates. It also provides for the maintenance of the Madrid Interbank Offered Rate (MIBOR). One of the provisions of the Umbrella law is given the rank of “organic law” in order to make the necessary adaptations to the laws that have such a qualified rank. The Umbrella law is to be effective as from the 1 January 1999.

The ECB welcomes the initiative of the Spanish Government to prepare for the timely implementation of the measures necessary or appropriate for the changeover to the single

currency. The Umbrella law constitutes a comprehensive piece of legislative work which encompasses a wide range of topics and areas under an overall intention of (i) on the one hand, being pedagogic for the public, and (ii) on the other hand facilitating the smooth introduction of the euro. It moreover incorporates provisions fully in line with the Commission Recommendations of 1998 on “banking charges for conversion to the euro” and on “dual display of prices and other monetary amounts”. The assessment is therefore positive, and no major inconsistencies or problems are to be mentioned.

4. The Umbrella law follows deliberately a legislative technique which includes the reproduction, where necessary, of provisions of the EU Council Regulations 1103/97 and 974/98. Whilst it is clear from the preamble of the draft and from the text of several provisions that the rules have a Community origin, the legislative technique of reproducing in a national act parts of Community legislation that has all the features of direct applicability and direct effect has been consistently criticized by the European Court of Justice. Implementation by insertion into national legal acts of EU Council Regulations:
- is not necessary, because of the direct applicability and direct effect of such Community acts (they are to be considered a part of the legal order of each Member State without any further national step);
  - it is inconvenient when the reproduction is not identical to the wording of the Community regulations, since it may jeopardise the simultaneous and uniform application of those regulations in the whole of the Community (Case 39/72 [1973] E.C.R. 101);
  - it may cast doubts about the place that the provision has in the hierarchy of sources, appearing to the reader as if it were a national legal source, thus interfering with the right of the Community to autonomously amend its legislation from time to time.

The technique of incorporating Community provisions in a national act may be acceptable when:

- the national laws incorporate some elements of Community regulations for the sake of coherence and in order to make them comprehensible to the persons to whom they apply (Case 272/83 [1985] E.C.R. 1057), but only if the Community nature of a legal rule is clearly shown or disclosed to those subject to it (Case 34/73 [1973] E.C.R. 981);
- the Community provision leaves room for interpretation and demands a national supplementary act specifying a solution where a certain discretion is given to the national legislator (direct effect requires clarity, precision and unconditionality of the Community provision).

The above considerations have specific cases of application:

- Article 2 of the Umbrella law reproduces parts of Article 1 of the EU Council Regulation 974/98, but it has added to the scope of the term “legal instruments” the meaning of “entries in official registries”; whilst there is no objection in the substance, the reservations described above concerning the legislative technique of the Umbrella law would recommend that the text reproduces remains identical to the Community text.
- Article 3(2), last sentence, of the Umbrella law, reproduces in an imperfect manner the second paragraph of Article 105a(1) of the Treaty; in particular, the name of the centimal subdivision of the euro is “cent”; whilst the Preamble of the EU Council Regulation 974/98 permits the “use of variants in common usage in the Member States”, such permission refers to common usage and not to legal designation (however, legal use of the term “céntimo” might be permitted when employed as the equivalent for the English term “hundredth” of an euro, but not as legal denomination of “cent”; see Arts. 10.1 and 15.3 of the Umbrella Law). The above considerations are here also applicable.
- The third paragraph of Article 5 of the Umbrella law reproduces imperfectly Article 2 of the EU Council Regulation 1103/97; the above considerations are here also applicable.
- Article 7 of the Umbrella law reproduces with different wording Article 6 (2) of EU Council Regulation 974/98. Whilst it may be said that the draft article improves the Community text, the above considerations would warrant identical wording or deletion.
- Article 9 of the Umbrella law re-states the principle of contract continuity which is enshrined in Article 3 of the EU Council Regulation 1103/97; whilst it may be said that the draft article improves the Community text, the above considerations would warrant identical wording or deletion.
- Article 10 of the Umbrella law reproduces with slight differences the text of Article 5 of the EU Council Regulation 1103/97. Whilst it may be said that the draft article improves the Community text, the above considerations would warrant identical wording or deletion.
- Article 11 of the Umbrella law reproduces partially one of the definitions in Article 1 of the EU Council Regulation 974/98, and states that the monetary regime during the transitional period is governed “according to the provisions of this chapter”, with no reference whatsoever to the Community regulations; it is recommended that such reference is clearly made.
- Article 13(1) of the Umbrella law reproduce with different wording Article 8(1) of the EU Council Regulation 974/98. Whilst it may be said that the draft article improves the Community text, the above considerations would warrant identical wording or deletion.

- Article 13(2) of the Umbrella law reproduce with different wording Article 8(3) of the EU Council Regulation 974/98. Whilst it may be said that the draft article improves the Community text, the above considerations would warrant identical wording or deletion.
- 5. The ECB welcomes and assesses positively the rules contained in the Umbrella law about redenomination of securities. However, Article 15.5 of the Umbrella law, concerning the redenomination of the outstanding public debt in foreign currency, issued according to foreign law, identifies the currency of issuance (*lex monetae*) and not the governing law (*lex contractus*) as “critère de rattachement” for re-denomination purposes. Although the normal case will be of both *lex monetae* and the *lex contractus* coinciding, it is worth mentioning that other Member States having introduced changeover legislation generally refer to the *lex contractus* as the only relevant connecting point.
- 6. The ECB welcomes the prohibition of banking charges and fees for the final exchange of banknotes, stated in Article 23 of the Umbrella law.
- 7. Article 31 refers to the Madrid Interbank Offered Rate (MIBOR). It distinguishes between different uses of MIBOR. Paragraph one refers to references to the MIBOR in mortgage contracts and states that, as long as technical or market practices do not impede this publication, the MIBOR will continue to be published to ensure continuity of contracts in the mortgage area. Should MIBOR not be available any more, the Minister of Economy and Finance would determine a substitute, with a view to creating the most similar rate in terms of calculation procedures. Most Member States will cease to elaborate local reference interest rates for money markets, and euro-wide rates will replace them. The continuation of the MIBOR in Spain is not in line with the criteria that other participating Member States will follow, aimed at ensuring the unity of the money market in the euro area. However, this continuation may be justified by its limited target, namely the continuity of outstanding contracts in the mortgage industry, and protection of consumers.
- 8. For contracts other than mortgage loans, Article 31 of the Umbrella law states that the Ministry of Economy and Finance will either fix a new calculation formula or determine a new reference rate which will replace the MIBOR, provided that the MIBOR loses its economic meaning and the parties in the contract do not replace it by consensual agreement with a new rate. The law adds that, if these conditions are respected, parties will not be entitled to request courts to unilaterally rescind their obligations because of the substitution of MIBOR. The ECB strongly recommends that the EURIBOR be named as the interbank rate which best approximates the functions of the MIBOR in an euro area-wide money market.

9. The ECB requests that it be consulted with respect to any royal decree and/or ministerial order to be enacted pursuant to the Umbrella law.
10. The ECB authorises the publication of this opinion at the discretion of the consulting authorities.

*In Frankfurt am Main, on 21 July 1998  
On behalf of the President of the ECB*

[signed]

*The Vice-president, Mr. C. Noyer*