



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

at the request of the Portuguese Ministry of Finance under Articles 109f (6) and 109l (2) of the Treaty establishing the European Community (hereinafter referred to as the “Treaty”), Article 5.3 of the Statute of the European Monetary Institute and Council Decision 93/717/EC of 22 November 1993 on a draft Decree-Law containing measures adapting several Portuguese legislation to the introduction of the euro

(CON/98/36)

1. On 23 July 1998 the European Central Bank (hereinafter referred to as the “ECB”) received a request for an opinion from the Portuguese Ministry of Finance on a draft Decree-Law containing measures adapting several Portuguese legislation to the introduction of the euro. An explanatory note was also submitted to the ECB. This opinion is based on the English translation of the Draft Legislative Decree submitted to the ECB by the consulting authority.
2. In accordance with Article 109l (2) of the Treaty, the ECB has taken over the advisory functions of the European Monetary Institute (hereinafter referred to as the “EMI”), that went into liquidation upon the establishment of the ECB on 1 June 1998. The ECB’s competence to deliver this opinion is based on Article 1.1, second indent, of the Council Decision (93/717/EC) of 22 November 1993, as the draft Decree-Law under consultation contains rules which, in the context of national change-over legislation, deal with provisions related to monetary law that have an impact on financial markets and, thus, fall within the consultative competence of the ECB. In accordance with Articles 12.4 and 47.1, second indent, of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the “Statute”), this Opinion has been adopted by the Governing Council with the contribution of the General Council.
3. The aim of the Decree-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 civil, commercial and economic law, setting out general principles and rules applying to the changeover, during the transitional period, and at the end of the transitional period. In section 1 it contains provisions dealing with changes in the Civil Code (*Código Civil*), in the Commercial Companies Code (*Código das Sociedades Comerciais*), in

the Co-operative Code (*Código Cooperativo*), in the Decree-Law no. 248/86, of 25 August (individual establishment with limited liability), in the Stock Market Code (*Código do Mercado de Valores Mobiliários*) and in the Decrees-Law no. 125/90 of 16 April (mortgage bonds), 408/91 of 17 October (short-term bonds) and 181/92 of 22 August (commercial paper). Section 2 deals specifically with re-denomination of transferable securities, section 3 with re-denomination of direct public debt, section 4 with taxation and public finance law and section 5 with the entry into force and transitional provisions. The Decree-Law is to be effective as from the 1 January 1999 and a number of transitory rules are adopted in line with the transitional provisions set out in the EU Council Regulation 974/98 of 3 May 1998.

4. The ECB welcomes the initiative of the Portuguese Government to prepare for the timely implementation of the measures necessary or appropriate for the changeover to the single currency both in the private and in the public sector. The draft Decree-Law constitutes a comprehensive piece of legislative work which encompasses a wide range of topics and areas under an overall intention of facilitating the smooth introduction of the euro in the Portuguese legal system and in the Portuguese securities market. It introduces a simple administrative procedure and no additional costs for companies re-denominating their share capital into euro from the start of Stage Three. Moreover, the possibility to re-denominate private bonds is foreseen, provided that the same method is retained as for the re-denomination of outstanding public debt. This is a helpful rule, providing for not preferential treatment of public securities. The assessment is therefore positive, and no major inconsistencies or problems are to be mentioned.

5. The ECB welcomes and assesses positively the provisions contained in the Decree-Law, in particular the use of the “legal tender” technique as criterion for the denomination of capital stock, bonds and securities. This technique would be in line with EU Council Regulation 974/98 of 3 May 1998 by allowing a “dual” currency denomination of capital stock, bonds and securities, opening the way to a broad implementation of the “no compulsion, no prohibition” principle in the Portuguese legislation. Moreover, the change in article 406 of the Stock Market Code is clearly in line with flexibility in the settlement of market operations. It might be useful to confirm this interpretation in the explanatory note. In this sense, article 6 of the draft Decree-Law, amending article 406 (1) of the Stock Market Code (*Código do Mercado de Valores Mobiliários*), would be interpreted as allowing the negotiation, quotation and settlement in such dual legal tender currencies, as from the start of the transition period, of securities and shares denominated in euro and escudo. In practice, it would be possible to negotiate, quote and settle in euro securities and shares denominated in escudo, without re-denominating them (and, less important, vice versa). A different interpretation of article 406 (1) of the Stock Market Code

(*Código do Mercado de Valores Mobiliários*), as amended by the draft Decree-Law, would be that securities in euro would be negotiated only in euro and securities in escudo only in escudo. The ECB considers that this interpretation would be contrasting with the EU Council Regulation 974/98 of 3 May 1998.

6. The solutions envisaged in section 2 under the principles of freedom of initiative of the issuer, unity, information, simplification and neutrality for the re-denomination process are regarded as highly appropriate for re-denomination, hence they comply with the principles of legal certainty and respect for the holder's economic position.
7. The ECB also welcomes and assesses positively the rules for re-denomination of transferable securities that are deemed to be in line with the Commission Reports on the subject. The ECB notes that the possibility to introduce the "no par value principle" in Portuguese legislation was not retained (see article 12), as it is the case in the other countries (e.g. Italy and Spain). Article 19 of the draft Decree-Law is considered an advisable measure as an incentive for the smooth introduction of the euro in the life of the economic agents.
8. The ECB confirms that it has no objection to this Opinion being made public by the competent Portuguese authorities at their discretion.

Done at Frankfurt am Main on 7 August 1998.

For the President of the ECB
[signed]

Otmar Issing