



**EUROPEAN CENTRAL BANK**

**OPINION OF THE EUROPEAN CENTRAL BANK**

**at the request of the Luxembourg Minister for Relations with Parliament, the Grand Duchy of Luxembourg, under Articles 109I (2) and 109f (6) of the Treaty establishing the European Community and Article 5.3 of the Statute of the European Monetary Institute on a draft legislative proposal to facilitate the redenomination of the capital of corporations in euro and settle rounding problems in this connection**

**CON/98/48**

1. On 21 September 1998 the European Central Bank (ECB) received a request from the Luxembourg Minister for Relations with Parliament, the Grand Duchy of Luxembourg, for an ECB Opinion on a draft legislative proposal No. 4456 (hereinafter referred to as the “Draft Act”) regarding:
  - the redenomination of the capital of commercial companies in euro, which modifies the law of 10 August 1915 regarding commercial companies, as amended; and
  - the differences that result from the application of the rules on rounding.
  
2. In accordance with Article 109I (2) of the Treaty establishing the European Community (hereinafter referred to as the “Treaty”), the ECB has taken over the advisory functions of the European Monetary Institute (EMI), which went 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, first indent, 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 legislative proposal contains provisions concerning currency regulation. In accordance with Article 17.5, first sentence, of the Rules of Procedure of the ECB, this ECB Opinion has been adopted by the Governing Council of the ECB.
  
3. The ECB welcomes the Draft Act since it aims (a) to facilitate the redenomination of the capital of corporations in euro through a procedure which is less time consuming and less expensive than the capital increase provided for under the laws of Luxembourg, and (b) to settle rounding problems that may occur as a result of such redenomination.

The Draft Act provides that the types of commercial corporations specified therein may redenominate their capital from any national currency unit (with the exception of the ECU) of the Member States of the European Union to euro from 1 January 1999 until 31 December 2001. In this connection, and in order to avoid rounding problems, the shareholders' meeting may also decide to increase the capital up to E1,000 for small corporations or up to 4% of the capital for large corporations. This provision will facilitate the smooth introduction of the euro by implementing simple and inexpensive measures which ease the redenomination of share capital in euro, as well as by introducing the possibility of capital adjustment in the event that a whole amount is preferred. Moreover, the non-par value share principle is foreseen in Article 1(1) in parallel with a mere redenomination of the share in euro. This provision is welcomed since it introduces flexibility and simplicity. This point was made in the Convention of 4 May 1998, which states that non-par value shares should be encouraged in order to avoid technical problems.

The Draft Act simplifies the procedure of the shareholders' meeting. Furthermore, in the spirit of Council Regulation (EC) No. 1103/97 of 17 June 1997, which provides, that from 1 January 1999, references to the ECU in legal instruments shall be replaced by a reference to the euro at a rate of E 1 to ECU 1, the Draft Act states that the board of directors may replace the reference to the ECU, in the event that the capital of the corporation is expressed in ECU in the corporate charter, by a reference to the euro. Obviously, such a measure would not constitute a capital increase because it shall occur by operation of law pursuant to Council Regulation (EC) No. 1103/97 of 17 June 1997. The provisions of the law of 10 August 1915 regarding publicity will still apply to the decision regarding the simplified capital redenomination in euro, which is crucial in order to ensure the dissemination of information.

Article 5 amends the provision of the law of 10 August 1915 on limited liability companies (SARL) regarding the minimum par value of the shares. According to the Explanatory Memorandum, this provision allows limited liability companies to express their capital in any national currency unit other than Luxembourg francs; however, the minimum par value of the shares must correspond to the minimum of LUF 1,000. This particular amendment is not connected to the scope of the Draft Act, which concerns the redenomination of the capital of commercial corporations in euro.

Article 6 of the Draft Act is declaratory in nature and states that, if the rounding conventions pursuant to the Council Regulation (EC) No. 1103/97 of 17 June 1997 are applicable, payments effected or book entries constitute full repayment of the obligations and do not raise any liability

for indemnification. This provision is welcomed since it clarifies any uncertainties that may arise with respect to the settlement of a debt.

4. The ECB confirms that it has no objection to this ECB Opinion being made public by the competent national authorities at their discretion.

Done at Frankfurt am Main on 20 October 1998.

The President of the ECB

[signed]

Willem F. Duisenberg