



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 23 February 2006

**at the request of the Central Bank of Malta
on a draft law on the adoption of the euro****(CON/2006/10)**

On 20 January 2006, the European Central Bank (ECB) received a request from the Central Bank of Malta for an opinion on the Euro Adoption Act (bill on the adoption of the euro in the Republic of Malta (hereinafter the 'draft law')).

The ECB's competence to deliver an opinion is based on the first and second indents of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions¹, as the draft law relates to currency matters and means of payment. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

The ECB welcomes this initiative to prepare early for the introduction of the euro, thus ensuring the timely implementation of the necessary transitional measures. The draft law intends to establish the legal framework and mechanics for the adoption of the euro as the currency of Malta and for the replacement of the Maltese lira. It lays down (i) measures for the adoption of the euro; and (ii) the Minister of Finance's powers with regard to the introduction of the euro. The purpose of the delegation to the Minister of Finance of the power to issue regulations in this field is to shorten the procedure for the adoption of the euro and increase flexibility in updating the same regulations.

1. Preliminary terminological considerations

- 1.1 In several parts of the draft law the term 'unit' is added to the word 'currency'. In consistency with the terminology of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro², the term 'unit' should be reserved for addressing the unit of account, but otherwise the euro is to be adopted merely as the 'currency' of Malta³.

¹ OJ L 189, 3.7.1998, p. 42.

² OJ L 139, 11.5.1998, p. 1.

³ In addition to being the currency of the 'participating Member States'.

- 1.2 There is no need to define the ‘euro’ in Article 3 of the draft law as Community law defines it. For this reason, the draft law, when defining the ‘euro’, should merely refer to the definition in Regulation (EC) No 974/98.
- 1.3 The definition of ‘legal instrument’ should be aligned with the definition in Council Regulation (EC) No 974/98, to include the words ‘legislative and statutory provisions’. There is the risk that the current definition in the draft law has a narrower effect.
- 1.4 Although the ECB is consulted on the English language version of the draft law only, in accordance with the Maltese Constitution the final text of the law has to be adopted also in the Maltese language. The Maltese version prevails in case of conflict, unless expressly specified otherwise. The Maltese version of the law will therefore need to refer to the single currency as ‘euro’ in order to comply with Article 2 of Council Regulation (EC) No 974/98 that provides that ‘the currency of the participating Member States shall be the euro’, and with the conclusions of the Madrid European Council of 16 December 1995 recorded in recital 2 of the same Regulation that: ‘the name of the single currency must be the same in all official languages of the European Union, taking into account the existence of different alphabets’. In addition, the European Council has concluded that the uniform name ‘euro’ of the single currency is ‘the agreed and definitive interpretation of the relevant Treaty provisions’, and that pursuant to Article 5(3) of the Act concerning the conditions of accession⁴, Member States have to observe the principles and guidelines deriving from the declarations, resolutions or other positions of the European Council at the time of their accession to the EU.

2. Comments on Part II ‘Measures for the Adoption of the Euro’

- 2.1 The ECB notes that in Article 4(i) and (ii) of the draft law the Minister will prescribe by order that euro banknotes and coins are legal tender, and that the euro is the currency of Malta. In this context, the ECB refers to Article 249 of the Treaty which provides that a Community regulation ‘shall be binding in its entirety and directly applicable in all Member States’. A Community regulation therefore does not need to be transposed into the domestic law of Member States⁵. If a Member State transposes a regulation into national law, the fact that the provision is a Community law provision may be obscured. In addition, if a Member State transposes a regulation in even a slightly different form, there is a risk that its content will be altered.
- 2.2 Considering that Community regulations and decisions on monetary matters apply directly in Malta, Article 4 of the draft law should not repeat Article 2 of Council Regulation (EC) No 974/98

⁴ OJ L 236, 23.9.2003, p. 34.

⁵ As stated by the Court of Justice of the European Communities in Case 34-73 *Fratelli Variola S.p.A. v Amministrazione italiana delle Finanze* [1973] ECR 981: ‘by virtue of the obligations arising from the Treaty and assumed on ratification, Member States are under a duty not to obstruct the direct applicability inherent in regulations and other rules of Community law. Strict compliance with this obligation is an indispensable condition of simultaneous and uniform application of Community regulations throughout the Community’. This position was also reiterated in Case 50-76 *Amsterdam Bulb BV v Produktschap voor Siergewassen* [1977] ECR 137.

and Article 106(1) of the Treaty, which, in addition, are clear and sufficiently comprehensive. Article 4 instead should merely refer to the abovementioned Community provisions and the Statute of the European System of Central Banks and of the European Central Bank as the legal basis for the adoption of the euro in Malta, and provide the Minister with the capacity to prescribe by order the discontinuation of the legal tender status of the Maltese lira banknotes and coins (Article 15(1) of Council Regulation (EC) 974/98), to regulate the dual circulation period until the withdrawal from circulation of national banknotes and coins (Article 15(2) of Council Regulation (EC) 974/98), as well as their late redemption (Article 16 of Council Regulation (EC) 974/98), and to adopt any necessary provision regarding the logistics of the cash changeover.

- 2.3 For the same reason, Article 5 of the draft law granting powers to the Minister in relation to Community provisions that have direct effect needs to be reconsidered, given that the application of the reference to euro in legal instruments and the principle of continuity are already provided for in Article 6(2) of Council Regulation (EC) No 974/98 and Article 3 of Council Regulation (EC) No 1103/97 on certain provisions relating to the introduction of the euro⁶ respectively. It should instead refer to these Community provisions. Any reference to ‘legal instruments’ should be in line with the same definition in Council Regulation (EC) No 974/98. Hence phrases such as ‘law, contract or other legal instrument’ should be replaced by ‘legal instrument’. It is also important to refer to the euro as the currency of Malta when necessary, since from the adoption date the euro will be legal tender in Malta.

3. Comments on Part III ‘Powers of the Minister’

- 3.1 Article 6 of the draft law has the nature of an enabling provision, granting powers to the Minister to make regulations. In view of the obligation on authorities of Member States to consult the ECB on any draft legislative provision within its field of competence in accordance with Council Decision (EC) No 98/415, all relevant significant subsidiary legislation by virtue of Article 6 of the draft law will need to be submitted to the ECB for its opinion before it is adopted.
- 3.2 Additionally, in Article 6(ii), the phrase ‘when the euro is not the currency unit of Malta’ should be substituted with ‘when the euro is not *yet* the currency of Malta’. It is clear that this provision refers to the dual pricing period in place *before* the adoption of the euro, hence such an insertion would clarify the timing of its effect. Article 6(iii) should either refer to Article 4 of Regulation (EC) No 1103/97, as this a directly applicable Community provision, or Article 6(iii) of the draft law should be deleted.
- 3.3 Moreover, in view of Malta’s Treaty and international obligations vis-à-vis the adoption of the euro in Article 7(1) of the draft law, the ECB proposes *implementation* instead of *compliance*.

⁶ OJ L 162, 19.6.1997, p. 1.

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 23 February 2006.

[signed]

The President of the ECB

Jean-Claude TRICHET