



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK**of 9 June 2006****at the request of the Estonian Ministry of Justice****on a draft law amending the Commercial Code and some other legislation to facilitate euro
introduction****(CON/2006/28)****Introduction and legal basis**

On 11 April 2006 the European Central Bank (ECB) received a request from the Estonian Ministry of Justice for an opinion on a draft law amending the Commercial Code, the Law on the land register, the Law on commercial pledges, the Law on commercial associations and the Law on State fees (hereinafter 'the draft law').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the first and sixth 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 the stability of financial markets. 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.

1. Purpose of the draft law

The draft law provides for (i) the redenomination into euro of shares and share capital for companies registered in Estonia; and (ii) the option for companies to issue non-par value shares. In addition, it amends Estonian law to allow amounts in the land register and commercial pledge register to be expressed in euro. One purpose of the draft law is to reduce the costs and eliminate the state fees payable on share capital increases or decreases resulting from recalculations relating to the future introduction of the euro in Estonia.

2. General observations

2.1 The draft law introduces provisions regarding the methods and procedure for redenomination of the nominal values of shares and share capital into euro. The redenomination is based on the following principles:

¹ OJ L 189, 3.7.1998, p. 42.

- minimum share values are to be rounded up to EUR 1 for unlimited partnerships and public limited companies; exceptionally, public limited companies established before 1 July 2006 may have share values of 50 euro cent or its multiple;
- minimum share values are to be rounded down to EUR 5 for private limited companies established until 1 July 2006 and the minimum share value is EUR 10 for companies established after 1 July 2006;
- the minimum share capital of private limited companies is to be rounded down to EUR 2 500;
- the minimum share capital of public limited companies is to be rounded down to EUR 25 000, the minimum amount of share capital required by the Second Company Law Directive².

2.2 The draft law also introduces in Estonian law the additional option for companies to have shares without a nominal amount. This would eliminate the need to increase or decrease share capital on conversion to the euro, thus introducing flexibility and simplicity³. This solution was recommended by the European Commission⁴. The draft law is also in line with the Second Company Law Directive, which recognises and permits the use of either ‘nominal value of shares’ or ‘accountable par’. According to the draft law, the minimum amount of an accountable par share is EUR 1 (or 50 euro cent for companies established before 1 July 2006) in order to avoid the emergence of penny-stocks.

3. Specific remarks

- 3.1 The ECB generally welcomes early preparation for the introduction of the euro. However, the current draft law (i) is scheduled to enter into force before the introduction of the euro in Estonia, namely on 1 July 2006; and (ii) applies the current exchange rate between the euro and the Estonian kroon on the apparent assumption that it will be the same as the eventual conversion rate.
- 3.2 With regard to the timing of the entry into force of the draft law, the ECB would like to stress that any form of official redenomination (as currently provided for by the draft law) should not take place before the date of the introduction of the euro, following the Council’s decision on the abrogation of Estonia’s derogation under Article 122(2) of the Treaty. The practice of other Member States has been that the official redenomination from the national currency into the euro

² Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ L 26, 31.1.1977 p. 1).

³ See ECB Opinion CON/98/48 of 20 October 1998 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.

⁴ See ‘The Impact of the introduction of the euro on capital markets’, Commission Communication (Euro Paper No 03, July 1997; available on the European Commission’s website at www.europa.eu.int), p. 3.

through national legislation only takes place upon the introduction of the euro. This practice provides both clarity and legal certainty and is consistent with Community legislation.

- 3.3 In respect of the exchange rate for the redenomination of the nominal values of shares and share capital into euro, the ECB would like to recall that Article 123(5) of the Treaty provides that if the Council decides to abrogate the derogation, it 'shall ... adopt the rate at which the euro shall be substituted for the currency of the Member State concerned'. Furthermore, Community secondary legislation on monetary matters, including the conversion rates adopted in accordance with Article 123(5) of the Treaty, is directly applicable in the Member States. Official redenomination should therefore only take place on the basis of the adopted conversion rate and it cannot be assumed that the current exchange rate between the euro and the Estonian kroon will be the same as the eventual conversion rate.
- 3.4 In view of the above comments, the ECB is of the opinion that the date of entry into force of the draft law (currently 1 July 2006) should relate to the date when Estonia's derogation is abrogated and the Council has adopted the rate at which the euro will be substituted for the Estonian kroon.

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

Done at Frankfurt am Main, 9 June 2006.

[signed]

The President of the ECB

Jean-Claude TRICHET