



EUROPEAN MONETARY INSTITUTE

## OPINION OF THE EUROPEAN MONETARY INSTITUTE

CON/97/24

at the request of the German Ministry of Justice, under Article 109f (6) of the Treaty establishing the European Community (the “Treaty”) and Article 5.3 of the Statute of the European Monetary Institute (EMI), on a draft Act (the “draft law”) for the introduction of the euro

1. On 2 October 1997 the EMI received a request for an opinion on the draft law from the German Ministry of Justice. An Explanatory Memorandum was also submitted to the EMI. The present opinion is based on an unofficial English translation of parts of the official draft law in German, which was submitted to the EMI by the consulting authority.
2. The EMI’s competence to deliver an opinion is based on Article 1.1, first and second indents, 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 draft law deals, inter alia, with currency legislation and the status and powers of the Deutsche Bundesbank.
3. The draft law aims to make the necessary adaptations to German legislation, in particular with a view to the national implementation of the regulatory framework for the introduction of the euro. Parts of the legislation are concerned with the adaptation of Deutsche Mark references to the euro as well as with the adaptation of the respective limits. As regards the wide range of legal areas addressed, it is principally securities law, currency law, the provisions with regard to the balance sheet and the replacement of the discount rate which are relevant to the EMI.
4. The EMI welcomes the initiative of the German Government to start early with preparations for the introduction of the euro, so as to ensure the timely implementation of the measures necessary for the changeover. As regards the date for the start of the third stage, the German legal system will already be equipped with the necessary legislative tools by 1 January 1999.
5. The EMI would like to comment on certain provisions as follows:
  - 5.1 Article 1, paragraphs 1 and 3, define the automatic replacement of German reference rates in relation to the introduction of the euro:

The discount rate (“Diskontsatz”) will be replaced by a base interest rate (“Basiszinssatz”) as defined in §1(1). §1(2) states that the reference rate mentioned in §1(1) will be the instrument [interest rate] used by the ECB which will be most similar to the discount rate in its purpose, frequency of change, and effect as a reference rate. The clause which states that the base interest rate can only change three times a year stems from the concern that direct reference to changes to the ECB’s interest rate may create operational problems for likely users of this rate.

§3 lays down details of the replacement of three other reference rates: §3(1) specifies that in any law which makes reference to the interest rate that was paid by the central government on cash advances from the Deutsche Bundesbank (“Zinssatz für Kassenkredite des Bundes”, which is no longer relevant since such cash advances have been abolished), this rate will be replaced by the base interest rate plus 1.5 percentage points. §3(2), No. 1, empowers the German Government, by means of a Regulation, to replace the lombard rate as a reference rate by the instrument used by the ECB which has functions most similar to those of the lombard rate. §3(2), No. 2, empowers the German Government to replace the FIBOR as the reference rate by the interest rate which has functions most similar to those of the FIBOR.

In all cases, the German Government will ultimately be empowered to specify which interest rate will correspond most closely to the reference rates used in the pre-euro period.

In this respect, the EMI wishes to draw attention to two issues.

- (i) The EMI notes that the period during which the base interest rate will be published, which will end on 31 December 2001, was chosen, as explained in the Explanatory Memorandum, in order to allow sufficient time in which to gain experience of the function and operation of an automatic link and that this period is not linked to the first three years following the start of Monetary Union.
- (ii) For the financial markets, the most important among the rates affected by the draft law might be the FIBOR. The only rate which is likely to perform the function of the FIBOR in Stage Three will be the EURIBOR, which is currently being prepared by the European Banking Federation and the International Foreign Exchange Dealers’ Association.

While decisions on the methodology to be used to compute and compose the panel of banks contributing data to the EURIBOR do not fall within the competence of the monetary authorities, existing information, although still incomplete, on the technical features of the EURIBOR gives rise to the following observations.

The only difference between the current FIBOR as it is now and the proposed EURIBOR (apart from the currency to which the rates refer) concerns the panel of banks contributing data for the calculation of the rate. In the case of the FIBOR, all such banks are located in Frankfurt, whereas in the case of the EURIBOR, they are located across the euro area. It seems clear that, in terms of economic value, the planned EURIBOR and the current FIBOR both represent the main reference rate *of a single currency area*, whereas the other reference rates may only reflect a subset of the operations carried out in that currency area. In the third stage, any Frankfurt-based FIBOR would lose this characteristic entirely and would not be able to fulfil the FIBOR's current function: the currency area for the currency of Germany will be the whole euro area, and any such euro-FIBOR would merely become a local subset, no longer indicative of or fulfilling the same function in relation to a single currency area.

The uncertainty surrounding the identity of the obvious successor to the FIBOR prevented the legislator from being able to specify which rate would replace FIBOR. The EMI welcomes the fact that provision is made in the Explanatory Memorandum for reference to the EURIBOR. The EMI has always favoured a rate representing the whole euro area as it is of the opinion that only this could have a corresponding function in the third stage to that performed at the moment by the FIBOR in relation to the Deutsche Mark.

- 5.2 The EMI considers the adaptations to legislation in the field of company law and to the Introduction Act to the Commercial Code to be helpful with a view to the smooth transition to the euro. They do not give rise to specific comments.
- 5.3 Article 3, §2, No. 3, lit. (b), sub-paragraph 4, concerns rounding aspects with regard to the presentation of the par value of shares. The provision does not contradict Article 5 of Council Regulation (EC) No 1103/97 of 17 June 1997,<sup>1</sup> whereas the latter provides for obligatory rounding to the nearest euro cent, it is applicable only for "monetary amounts to be paid or accounted for", which is not the case for the par values of shares in this context.

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<sup>1</sup> OJ No. L 162, 19.6.1997, p. 1.

- 5.4 Article 4, §2, concerning Article 43, should take account of the fact that conversion from ECUs into euro, in accordance with Article 2 of Council Regulation (EC) No 1103/97 of 17 June 1997, will be a direct exchange of one euro for one ECU.
- 5.5 Article 5 concerns the amendment of provisions relating to the law on stock exchange transactions; it warrants that the German stock exchanges may become entitled to deal with questions of a legal and organisational nature on the stock exchange price of securities, especially in the light of the changed needs of the financial markets.
- 5.6 Article 6 introduces provisions on the redenomination of bonds into euro in accordance with Article 8(4), as laid down in the draft Council Regulation on the introduction of the euro. It provides for the obligatory redenomination of federal government debt and allows, in conformity with Article 8(4), first indent, for the redenomination of other debt instruments and bonds by the debtor. This is in line with the relevant rounding rules with regard to increasing or decreasing the nominal value of the claim of the creditor and the continuity of the debt instruments (Article 6, §7). The costs of redenomination are to be borne by the debtor (Article 6, §9). In addition, there is provision for legal measures to change the tradable nominal amounts of bonds (so-called re-nominalisation) and to modify the formulae for the computation of interest rates of maturities below one year and determination of business days (so-called re-conventioning of day counts); these measures are subject to national law pursuant to Article 1, last indent, of the above draft Council Regulation. The EMI welcomes that it is confirmed in the Explanatory Memorandum, that Article 6, §3, applies only to bonds subject to German law.

Challenges to the redenomination can be based on only four specific reasons (cf. Article 6, §8) and must be brought to court within one year of the redenomination date. This should be appropriate to limit the period of uncertainty.

- 5.7 With regard to the amendments to the German provisions on coins, Article 8 extends the protection available to DEM-denominated coins to euro coins, in particular before their first issuance following the preparation period. This provision will help to avoid any confusion of the new euro coins with medals and marks and, by so doing, will help to ensure the smooth introduction of the euro banknotes and coins.
- 5.8 The EMI takes note of the fact that, according to Article 9, §1, a provision of the Currency Act shall be deleted which lays down a requirement for the prior authorisation of index clauses by the competent authority. In the third stage, as soon as the currencies of the participating Member States lose their status as currencies in their own right, they will represent only national

subdivisions of the euro. The monetary law of the Community currently under consideration<sup>2</sup> does not contemplate any prohibition or Community control of index clauses. Therefore, the EMI agrees with the conclusion of the Explanatory Memorandum that, with regard to the monetary policy function, national provisions on index clauses are no longer necessary. However, Member States may, for other policy requirements, establish or maintain indexation provisions relating to the competence of the national legislator, e.g. in the field of contractual law, such as the provision laid down in Article 10 for residential rent contracts.

The EMI has no objection to this opinion being made public.

16 December 1997

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<sup>2</sup> Resolution of the European Council of 7 July 1997 on the legal framework for the introduction of the euro (OJ C236/7 of 2 August 1997)