



13 February 1998

**OPINION OF THE EUROPEAN MONETARY INSTITUTE**

**at the request of the Austrian 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 EMI (the “Statute”) on a draft federal law changing certain provisions in the Austrian legislation as ancillary measures for the introduction of the Euro - Erstes Euro-Justiz-Begleitgesetz (the “Draft Law”)**

**CON/98/01**

1. On 16 January 1998 the EMI received a request from the Austrian Ministry of Justice for an opinion on the Draft Law.
2. The EMI’s competence to deliver an opinion is based on Article 1.1, first indent, of the Council Decision of 22 November 1993 (93/717/EC) on the consultation of the EMI by the authorities of the Member States on draft legislative provisions as the Draft Law contains provisions concerning, amongst other things, currency legislation and the status of the euro.
3. The Draft Law contains the following provisions as ancillary measures for the introduction of the euro:
  - Austrian entities will be able to draw up their balance sheets also in euro as from 1 January 1999.
  - Corporations will be able to be established in euro and notional no par value shares are introduced.
  - Comparable interest rates are provided for in the case of laws, regulations and contracts making reference to an interest rate which will cease to exist in Stage Three.
  - In long-term contracts between consumers and entities, a statement is to be drawn up of all relevant amounts, in euro and in the Austrian schilling denomination, and consumers are entitled to be informed about all relevant amounts, in euro, in a timely fashion.
  - Procedural rules aim at enabling a transparent transition to the single currency.
4. The EMI welcomes the comprehensive approach which has been chosen by the Draft Law. Not only does the Draft Law provide for technical adaptations like the replacement of schilling amounts by euro amounts, but it also aims at reflecting the Council Regulation on certain

provisions relating to the introduction of the euro (97/1103/EC) and the Draft Regulation on the introduction of the euro. In this respect the Draft Law addresses issues like continuity of contracts, the replacement of the Austrian schilling by the euro, rounding, the principle of “no compulsion, no prohibition” as well as the replacement of reference interest rates.

5. The EMI notes that the discount rate currently announced by the Oesterreichische Nationalbank will be replaced in Stage Three by an interest rate to be determined by a regulation of the Austrian Government. In determining this interest rate the Austrian Government has to take into account the monetary policy instruments of the ECB in general and the deposit facility in particular. In the explanatory memorandum to the Draft Law it is stated that Section 1, Article 1 of the Draft Law is to be understood as an interim solution since a final decision on the ECB’s monetary policy instruments has not yet been taken, and that the interest rate determined by the Austrian Government shall be replaced in the future by a reference to a monetary policy instrument of the ECB. As regards the omission of reference rates in contracts, Section I, Article 2 of the Draft Law states that “such interest rate shall be replaced by the most closely related interest rate”.
6. The EMI notes that the Draft Law does not contain a specific rounding provision but makes, in the explanatory memorandum, reference to Articles 4 and 5 of the Council Regulation on certain provisions relating to the introduction of the euro.
7. As regards long-term contracts between consumers and entities, the EMI notes that the Draft Law determines that all relevant amounts have to be shown in Austrian schillings and in euro.
8. The EMI welcomes the fact that in its explanatory memorandum the Draft Law makes clear that the national currencies will become denominations of the euro as from 1 January 1999. However, references to the euro and the Austrian schilling unit are not always uniform in the Draft Law. For example, in “Allgemeiner Teil”, Chapter 1, page 4, second paragraph, it is stated that the euro will, on 1 January 1999, “stand by the Austrian schilling’s side” and “respectively will take the Austrian schilling’s place”. On page 8 (“Allgemeiner Teil”, Chapter 1), last paragraph, and on page 43 (“Besonderer Teil”), ad Article II, the euro is described as “currency unit”. The EMI recommends that a uniform terminology be used in the Draft Law and the explanatory memorandum in order to avoid misunderstandings as regards the relationship between the euro and the schilling as its national denomination.
9. As regards the amendment of Article 193 of the Commercial Code (Section II, 2. of the Draft Law) and Section XI (“Übergangsbestimmungen”) of the Draft Law, the EMI understands that Austrian undertakings/entities can draw up their balance sheets either in euro or in the schilling unit during the transitional period. However, the EMI notes that the wording of Article 193

paragraph 4 of the Commercial Code in its amended version, according to which the balance sheet and the profit and loss account have to be drawn up in euro (in the meaning that schillings are covered by the term "euro"), could lead to misunderstandings. A reference to Article XI, paragraph 2 might therefore be made in Article II, 2. of the Draft Law.

10. The EMI welcomes the fact that the explanatory memorandum states that the Draft Law aims at providing the economy with appropriate instruments to make use of the euro as soon as possible.
11. The present opinion does not prejudge reports which the EMI is required to draw up under Article 109j (1) of the Treaty and Article 7 of its Statute.
12. The EMI agrees to this opinion being made public by the consulting authorities.

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