



13 February 1998

**OPINION OF THE EUROPEAN MONETARY INSTITUTE**

**at the request of the Austrian Ministry of Finance 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 law introducing a federal law which stipulates measures in fiscal law accompanying the introduction of the euro and amending the 1998 “Einkommenssteuergesetz” (Income Tax Act) as well as the “Zollrechtsdurchführungsgesetz” (Customs Act Implementation Act); Euro Fiscal Accompaniment Act (the “Draft Law”)**

**CON/98/02**

1. On 15 January 1998 the EMI received a request from the Austrian Ministry of Finance 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.
3. The Draft Law contains specific provisions for the transitional period from 1 January 1999 to 31 December 2001 concerning the effects of differences in exchange rates before 1 January 1999 on accounting techniques. In relation to profit and loss accounts after the start of Stage Three, the Draft Law also prohibits the creation of reserves in connection with the introduction of the euro. Furthermore, the Draft Law contains amendments to the Income Tax Act and the Customs Act Implementation Act.
4. As regards Section II, 1. to 3. of the Draft Law, the EMI notes that the replacement of the wording “in schillings” in the existing Income Tax Act by “in domestic currency” is confusing as the new wording might give the impression that the schillings will remain as a lawful “domestic currency” in Austria in Stage Three and will not become instead a denomination of the euro. The same holds true for the explanatory notes to Section II when describing both the Austrian schilling and the euro as “domestic currency units”. The EMI suggests therefore to reconsider the wording of these provisions in the Draft Law.

5. Section III, 1 states that “insofar as customs law permits rounding in the conversion of a sum expressed in schillings into euro, the Federal Minister of Finance may set the rounded countervalue by decree”. This provision represents the national implementation of Article 1, Section 4, of the Regulation (EC) No. 82/97 of the European Parliament and of the Council of 19 December 1996 amending Regulation (EEC) No. 2913/92 establishing a Community Customs Code. Article 1, Section 4, of this Regulation states that Article 18, paragraph 3, of the Community Customs Code is amended as follows: “The customs authorities may round up or down the sums resulting from the conversion into their national currency of an amount expressed in ECU for purposes other than determining the tariff classification of goods or import or export duties. The rounded amount may not differ from the original amount by more than 5%”. The explanatory notes to Section III of the Draft Law explain that this provision is compatible with EU legislation and refer in this context to a Statement of the European Commission on the “Impact of the Changeover to the Euro on Community Policy, Institutions and Legislations”, dated 5 November 1997 (COM 97/560 final). Annex 8, Section B2, second paragraph of this document refers to the amended Article 18 of the Community Customs Code and states that this provision will still be applicable from 1 January 1999 until 31 December 2001 for participating Member States because the reasoning behind this provision (namely to achieve rounded amounts in the national currency) is still valid during the transitional period. In addition, Section C, 22., last indent, and Annex 7, Section C, last paragraph support this interpretation. The EMI shares this interpretation of the European Commission and is of the opinion that Section III, 1. of the Draft Law is compatible with the Treaty and the Council Regulation and certain provisions relating to the introduction of the euro (EC/11/03/97), which also deals with rounding.
6. 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.
7. The EMI agrees to this opinion being made public by the consulting authorities.

13 February 1998