



EUROPEAN MONETARY INSTITUTE

OPINION OF THE EUROPEAN MONETARY INSTITUTE

CON/98/11

At the request of the Portuguese 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 European Monetary Institute (EMI), on a draft Decree-Law (the “draft law”) on certain rules concerning the changeover process for the introduction of the euro in Portugal.

1. On 10 February 1998 the EMI received a request for an opinion on the draft law from the Portuguese Ministry of Finance. An Explanatory Memorandum was also submitted to the EMI. On 17 February 1998 the EMI received from the consulting authority an English version of the draft law, and the present opinion is based on that English translation.
2. The EMI’s competence to deliver an opinion is based on Article 1.1, first indent, 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.
3. The draft law aims to make the necessary adaptations to Portuguese legislation, in particular with a view to the national implementation of the regulatory framework for the introduction of the euro. The draft law refers to rounding rules, the legal regime for coinage in Stage Three, the exclusion of the euro from the legal category of “foreign currency”, accountancy rules, replacement of reference interest rates, redenomination of public and private debt, taxation and budget.
4. The EMI welcomes the initiative of the Portuguese Government to prepare for the introduction of the euro, so as to ensure the timely implementation of the measures necessary or convenient for the changeover. The draft law is foreseen as a supplement to the draft EU Council regulation on the introduction of the euro, and provides for its entry into vigour the day of adoption by Portugal of the single currency (except Articles 2 and 3(1)(2), concerning the \$50 coin, which are effective upon enactment). The EMI also welcomes that the draft law has given consideration to the views of the EMI in its reports on legal convergence.

5. Specific comments are the following:

(a) The EMI welcomes the legal provisions depriving of legal significance any differences arising out of rounding rules in conversions between escudos and euros, and enabling the Ministry of Finance to enact secondary regulations as necessity might dictate.

(b) The rules on accountancy adequately reflect the guiding principle of “no prohibition - no compulsion”. The EMI notes that the draft law does consider neither adaptations in the legislation in the field of company law nor rules for re-denomination of company shares; it does enter neither the domain of re-denomination of quotations in equity markets nor of the rules applying to commercial registries, both of which would normally be a logical complement to any re-denomination of the unit used for corporate accounting and official reporting purposes. It is noted, however, that the Preamble already considers the draft law as a “first phase in the process of legislative preparation of the Portuguese legal system for the introduction of the euro”, and implicitly announces further legislative acts.

(c) The discount rate of the Bank of Portugal will be replaced by an interest rate to be fixed by the Government following consultation with the Bank of Portugal. Other reference interest rates are to be replaced by “financially equivalent”, and the Ministry of Finance is given statutory powers to specify such substitute rates. The EMI welcomes the envisaged system as consistent with general principles of Law and permitting avoidance of legal uncertainties and of litigation risks. Explicit references to the EURIBOR and to EONIA might be made by the Ministry of Finance once the preparatory work for these reference rates is finalised. That explicit reference is highly recommended : the EMI has always favoured a reference rate able to represent the whole euro area, to replace the local rates ; EURIBOR, in particular, meets the features necessary to have a function in the third stage corresponding to that performed at this moment by the LISBOR in relation to the Escudo.

(d) The EMI welcomes the regime envisaged for re-denomination and re-conventioning of public debt. The method chosen for that re-denomination, based on individual holdings, and rounding to the euro cent, is similar to the method envisaged by many Member States (i.e. Germany, Austria, Belgium; France and The Netherlands envisage rounding to the euro unit). The enabling authority given to the Public Debt Agency (Instituto de Gestão do Crédito Público) is a useful device to solve specific problems that may arise.

(e) With reference to the re-denomination of private debt, the draft Article 16 paragraph 2 submits to Portuguese law the re-denomination of debt issued under Portuguese law but “*denominated in*

the currency of another Member State ... having decided to re-denominate its debt'. The solution given by the draft law to a problem of international private law is correct. Re-denomination of debt securities during the transitional period has been construed as a right given by the monetary law of the Community, Article 8(4) of the draft EU Council regulation on the introduction of the euro, to one of the contractual parties, the issuer/borrower; therefore, it is a right introduced in the law of the contract and the modalities of its exercise pertain to the *lex contractus* - Portuguese law. No Member State has, so far, introduced legislation taking an approach which may contradict the solution given in the draft law.

(f) The EMI notes that some of the items that other Member States have considered appropriate to be legislated in relation to the re-denomination of debt securities are not addressed in the draft law : (i) legal measures to change the tradable nominal amounts of bonds so as to avoid decimals (so-called re-nominalisation), (ii) allocation to the issuer/borrower of the costs of redenomination, and (iii) a short time limit for judicial challenges of re-denomination measures. However, it is expected further legislative provisions in the context of the introduction of the euro where these matters might be taken into consideration.

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

6 April 1998