



EUROPEAN MONETARY INSTITUTE

8 May 1998

**OPINION OF THE EUROPEAN MONETARY INSTITUTE**

**at the request of the Department of Finance of Ireland under Article 109f(6) of the Treaty establishing the European Community (the “Treaty”) and Article 5.3 of the Statute of the EMI concerning a draft bill enacting provisions relevant to the economic and monetary union (“the draft bill”)**

**(CON/98/18)**

1. On 26 March 1998 the EMI received a request for an opinion on a draft bill enacting provisions relevant to economic and monetary union from the Irish Department of Finance.
2. The EMI’s competence to deliver an opinion is based on Article 1.1 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 bill contains provisions concerning currency legislation, means of payment and related matters.
3. The draft bill aims at making adaptations to Irish law with a view to the implementation of Ireland’s national changeover plan for the introduction of the euro. The draft bill contains provisions relating to the introduction of the euro currency system, the substitution of monetary references in legal instruments (including both the current decimal and pre-decimalisation currencies), conversions and rounding, legal tender and legal tender amounts, the withdrawal of legal tender notes and coins, the application of copyright laws to euro notes and coins, commemorative coins, and the redenomination and renominalisation of outstanding debt and share capital.
4. The EMI welcomes the initiative of the Irish Government to prepare for the timely implementation of the measures necessary or appropriate for the changeover to the single currency. The draft bill is viewed as a supplement to the draft EU Council regulation on the introduction of the euro, and provides for its coming into operation by ministerial orders on different dates. The draft bill is divided into heads for a bill, and is accompanied by explanatory notes.
5. The EMI would like to raise the following detailed comments as set out in the subsequent paragraphs of this opinion.

6. In its March 1998 report to the Council pursuant to Article 109j of the Treaty examining the compatibility between each Member State's national legislation and Articles 107 and 108 of the Treaty, the EMI noted two imperfections in Irish law. First, the Minister for Finance's ability under section 134 of the Central Bank Act, 1989 to suspend certain business transactions in the national interest needs clarification in order to avoid any possibility of government interference in the Central Bank of Ireland's ESCB-related operations. Second, the requirement under sections 10(1) and 13(1)(b) of the Central Bank Act, 1997 that the Minister for Finance's consent be obtained before the Central Bank of Ireland may refuse to approve the rules of a payment system or subsequently revoke such approval is unrestricted and may therefore also extend to the Central Bank of Ireland's ESCB-related involvement in payment systems. Based on informal discussions with the Department of Finance, the EMI understands that these imperfections will be addressed in the context of the current legislative changes. The EMI welcomes this development.
7. The EMI notes that, unlike changeover legislative initiatives proposed in other EU Member States (and indeed outside the European Union), the draft bill does not include any provisions relating to the continuity of price sources used in financial market transactions. The EMI understands that participants in the Dublin interbank market will discontinue the provision of reference rates for the calculation of DIBOR and will adopt EURIBOR as the standard for the Dublin market. In a number of other Member States legislation has been proposed providing that domestic reference rates shall, after the introduction of the euro, be replaced by those interest rates that will correspond most closely to existing reference rates. In some cases the Ministries of Finance are empowered to specify by order the successor rate, while in others EURIBOR is identified in the legislation as the successor rate. The EMI favours the replacement of domestic reference rates by a reference rate representing the entire euro area and believes that EURIBOR, in particular, will perform in relation to the euro the same function that is currently performed by DIBOR in relation to the Irish pound. Although the EMI understands that the replacement of references to DIBOR by references to EURIBOR should be assured in accordance with general legal principles, legislative confirmation of this would be helpful in ensuring a smooth changeover by the Dublin market.
8. The EMI also notes that the draft bill does not include provisions relating to a number of other matters that have been addressed in changeover legislative initiatives proposed in other EU Member States (e.g., provisions relating to taxation, dual pricing, consumer protection, financial markets, social welfare, etc.). The EMI assumes that the effect of the draft bill will be supplemented with additional legislative or other proposals, perhaps in the aftermath of the establishment of Ireland's Currency Changeover Board which will oversee the detailed implementation of the changeover.

9. (*Head 7 of the draft bill*)

9.1 The draft bill proposes to substitute section 24 of the Central Bank Act, 1989 with new wording. Section 24 of the Central Bank Act, 1989 currently provides that the monetary unit of the State shall be the Irish pound which shall be issued in legal tender form. The draft bill would amend this to provide that the currency of the State shall be the euro as from 1 January 1999 and that the Irish pound shall be a denomination of the euro in accordance with Council Regulation (EC) No \*\*\*/98 on the introduction of the euro.

9.2 The legislative intention of the draft bill appears to be to repeat parts of the draft Council Regulation on the introduction of the euro to be adopted under Article 109l (4), third sentence, of the Treaty (OJ No.C 236/8, 2 August 1997) (the “euro regulation”). In particular, Article 2 of the euro regulation will provide that as from 1 January 1999 the currency of the participating Member States (which will be defined in Article 1 to include Ireland) shall be the euro. Article 6(1) of the euro regulation will provide that during the transitional period the euro shall also be divided into the national currency units according to the irrevocably fixed conversion rates. In accordance with Article 1 of the euro regulation, the national currency units will, of course, include the Irish pound unit since the Irish pound will continue to be defined as the monetary unit of Ireland on the day before the start of the third stage. As stated in the preamble to the euro regulation, during the transitional period the Irish pound unit will be defined as a sub-division of the euro.

9.3 Article 6(1) of the euro regulation provides that the monetary law of Ireland shall continue to apply “*subject to the provisions of this Regulation*”. Provisions of Irish monetary law that overlap with provisions of the euro regulation will thus be inapplicable after 1 January 1999. The Department of Finance may want to consider whether it is advisable to include in the draft bill new provisions of Irish monetary law that will not have any legal effect or content.

9.4 As stated in the EMI opinion to the Irish Department of Finance dated 29 October, 1997, national implementation of regulations is not usually necessary and is indeed impermissible where the Community nature of a legal rule is concealed from those subject to it (Case 34/73 [1973] E.C.R. 981). National implementation of regulations is impermissible where it jeopardises the simultaneous and uniform application of those regulations in the whole of the Community (Case 39/72 [1973] E.C.R. 101). Legislative duplication of a Community regulation is inconsistent with Community law except in special circumstances where national laws incorporate some elements of Community regulations for the sake of coherence and in order to make them comprehensible to the persons to whom they apply (Case 272/83 [1985] E.C.R. 1057).

9.5 While the EMI accepts the need for legal clarity in the totality of legislation which amounts to the monetary law of a participating Member State and recognises the practice and need to refer in national legislation to the lawful currency of the State, it respectfully suggests that no attempt should be made to repeat or reflect the detailed wording of the euro regulation, which will have direct effect in all participating Member States. While acknowledging that the legislative tradition of other Member States allows for the wholesale replacement of a discrete body of monetary law by the euro regulation, and that Irish monetary law does not readily lend itself to such a replacement, the EMI believes that the provisions of the euro regulation as set forth in paragraph 9.2 above are sufficiently coherent and comprehensive to render it unnecessary to repeat or reflect such provisions in Irish law.

10. (*Head 8 of the draft bill*)

10.1 The draft bill introduces a provision that on and after 1 January 2002, any reference to an amount of money in the Irish pound (both decimal currency and pre-decimalisation currency) contained in a legal instrument shall be read as referring to an amount in euro according to the conversion rate. The reference to the decimal currency and the pre-decimalisation currency refers to the introduction in Ireland in February 1971 of the current decimal currency based on the Irish pound comprising one hundred (100) pennies.

10.2 The EMI believes that, insofar as concerns references to an amount of money in the current decimal currency, this provision is duplicative of Article 14 of the euro regulation, which provides that where in legal instruments existing at the end of the transitional period reference is made to the national currency units, these references shall be read as references to the euro unit according to the respective conversion rates. For the reasons set forth in paragraphs 9.3, 9.4 and 9.5 above, the EMI suggests that no attempt should be made to repeat or reflect the detailed wording of the euro regulation, which will have direct effect in all participating Member States.

10.3 Insofar as concerns references to an amount of money in the pre-1971 (i.e., pre-decimalisation) currency, the explanatory notes to the draft bill state that provision must be made for the continuity of legal instruments denominated in the pre-decimalisation currency because Article 14 of the euro regulation provides only for the substitution by the euro of references to national currency units "*as those units are defined on the day before the start of the third stage of Economic and Monetary Union.*" Assuming that the proposed amendment to section 2(2) of the Decimal Currency Act, 1969 contained in Head 7 of the draft bill does not take effect until 1 January 1999, the Irish pound and the new penny consisting of one-hundredth part of an Irish pound shall, on the day before the start of the third stage, be *the only* legal denominations or units of money in Irish currency. Given that the old pre-decimalisation currency no longer exists in Ireland, the pre-decimalisation units are now defined under Irish law in terms of the

current decimal currency. On the day before the start of the third stage references in legal instruments to the pre-decimal currency are therefore defined as references to the new decimal currency in accordance with the provisions of the Decimal Currency Act, 1970. The EMI believes that Article 14 of the euro regulation applies with equal force to references in legal instruments to amounts of money in the pre-decimalisation currency, as well as amounts in the current decimal currency. In this regard, the EMI notes that other Member States have not sought to legislate for continuity between pre-existing national currencies and the euro. The EMI is unconvinced of the need for the additional provisions in the draft bill relating to the pre-1971 currency.

11. *(Heads 9 and 10 of the draft bill)*

11.1 The draft bill introduces provisions that conversions either way between the euro unit and the Irish pound unit and rounding that takes place after a conversion shall comply with the provisions set out in Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro. For the reasons set forth in paragraphs 9.3, 9.4 and 9.5 above, the EMI suggests that no attempt should be made to repeat or reflect the detailed wording of this regulation, which has direct effect in Ireland.

11.2 The draft bill further provides that where conversions are to be made from the pre-decimalisation currency to the euro unit, amounts will first be converted, in accordance with sections 4 and 13 of the Decimal Currency Act, 1970, into the Irish pound unit, and then into the euro unit. Also, it is provided that the rounding provisions of Council Regulation (EC) No 1103/97 shall apply where the original amount to be converted was expressed in the pre-decimalisation currency. For much the same reasons outlined in paragraph 10.3 above, the EMI is unconvinced of the need for the additional provisions in the draft bill relating to the pre-1971 currency.

11.3 The EMI notes with interest the introduction of a provision empowering the Minister for Finance to make regulations regarding rounding. The EMI requests that it be consulted by the Department of Finance with respect to any ministerial orders containing draft legislative provisions relating to rounding.

12. *(Head 11 of the draft bill)*

12.1 Under Article 8(1) of the euro regulation it is provided that, unless parties agree otherwise and without prejudice to paragraphs 3 and 4, during the transitional period acts to be performed under legal instruments stipulating the use of or denominated in the euro unit shall be performed in that unit. The EMI thus notes that, notwithstanding section 25 of the Central Bank Act, 1989, under Irish law contracts may be made, executed, entered into and done in the euro unit during

the transitional period in accordance with the euro regulation even though notes and coins denominated in the euro unit will not be available. Insofar as section 25 of the Central Bank Act, 1989 requires clarification, such clarification should be explicitly linked to Article 8 of the euro regulation. In addition, reference should be made to the *euro unit* rather than the *euro* (which term includes both the euro unit and national currency units).

12.2 The EMI believes that the provision stipulating that in the transitional period the Irish pound unit will satisfy a requirement in contracts that payment be made in legal tender is unnecessary in view of Article 9 of the euro regulation, which provides that banknotes and coins denominated in a national currency unit shall retain their status as legal tender within their territorial limits during the transitional period. Thus, all payments required to be made in legal tender in Ireland during the transitional period must be discharged in the Irish pound unit. For the reasons set forth in paragraphs 9.3, 9.4 and 9.5 above, the EMI suggests that no attempt should be made to repeat or reflect the detailed wording of the euro regulation, which has direct effect in Ireland.

13. *(Heads 12, 13 and 14 of the draft bill)*

The EMI welcomes the provisions contained in these heads as they contribute to a clarification of Irish monetary law.

14. *(Head 15 of the draft bill)*

The EMI welcomes this provision. It would be preferable that the provision be drafted consistently with the wording of Article 11 of the euro regulation to refer to “*coins denominated in euro or in cents*” (as opposed to “*coins in euro denominations*”).

15. *(Heads 16, 17, 19, 20, 21 and 22 of the draft bill)*

The EMI welcomes the provisions contained in these heads as they contribute to a clarification of Irish monetary law.

16. *(Head 18 of the draft bill)*

The EMI notes that the calling in of coins by the Minister is not subject to approval by the European Central Bank under Article 105a(2) of the Treaty, but rather “subject to approval by the ECB of the volume of issue.” This point should be clarified in the draft bill.

17. *(Head 23 of the draft bill)*

The EMI agrees that the copyright in all legal tender notes denominated in the euro unit issued by or under the authority of the ECB will belong to the ECB. It may therefore be appropriate to amend section 57 of the Copyright Act, 1963 so as to clarify that the relevant provisions shall be without prejudice to the copyright of the ECB in such legal tender notes, rather than to declare the ECB's copyright. The EMI assumes that it is only intended to make provision with respect to the copyright for legal tender notes denominated in the euro unit, as distinct from "*legal tender notes denominated in euro*", which would of course embrace legal tender notes denominated in both the euro unit and the Irish pound unit (as a sub-division of the euro).

18. *Head 24 of the draft bill)*

The EMI welcomes the provisions contained in this head.

19. *(Head 25 of the draft bill)*

This provision states that as and from 1 January 2002, a reference in a legal instrument to the currency of a participating Member State other than Ireland is to be read as a reference to the euro currency at the conversion rate. The EMI believes that this provision is duplicative of Article 14 of the euro regulation, which provides that where in legal instruments existing at the end of the transitional period reference is made to the national currency units, these references shall be read as references to the euro unit according to the respective conversion rates.

20. *(Head 26 of the draft bill)*

20.1 The EMI notes that the issue of commemorative coins by Member States has been the subject of ongoing discussion in the Monetary Committee. It has been suggested that the conferring of legal tender status on commemorative coins may be a competence of the EU Council under Article 109I(4) of the Treaty. Assuming that commemorative coins issued by the Minister under this section shall have legal tender status, such coins are subject to Article 105a (2) of the Treaty whereby Member States may issue coins subject to approval by the ECB of the volume of issue. Clarification of this point in the draft bill is necessary.

20.2 The EMI accepts that the Minister for Finance may determine the denominations, designs, dimensions, weights and composition of such commemorative coins. In this regard the EMI notes that Article 105a (2), second sentence, of the Treaty provides that the Council may, acting in accordance with the procedure referred to in Article 189c and after consulting the ECB, adopt measures to harmonise the denominations and technical specifications of all coins intended for

circulation to the extent necessary to permit their smooth circulation within the Community. The EMI agrees that Article 105a (2), second sentence, does not prejudice the Minister's ability to establish the technical specifications of Irish commemorative coins since such coins, notwithstanding their legal tender status, are not generally used for payment purposes and therefore are not intended for circulation within the meaning of Article 105a (2). In addition, the harmonisation of the denominations and technical specifications of commemorative coins is not necessary to permit their smooth circulation within the Community within the meaning of Article 105a (2). Indeed, the Minister for Finance should ensure that the technical specifications of commemorative coins are sufficiently different from coins intended for circulation throughout the euro area so as to avoid any possible confusion between commemorative coins and coins that will be used in everyday payment transactions.

20.3 The EMI notes with interest the provision in section 4 of Head 26 that a tender of a commemorative coin shall be legal tender in the State. The EMI notes that Article 11 of the euro regulation provides that the participating Member States shall issue coins denominated in euro or in cents and complying with the denominations and technical specifications which the Council may lay down in accordance with the second sentence of Article 105a (2) of the Treaty, and that these coins shall be the only coins which have the status of legal tender in all these Member States. Since the commemorative coins provided by the Minister do not need to comply with the denominations and technical specifications laid down by the Council in accordance with Article 105a (2), it has been suggested that such commemorative coins need not have the status of legal tender outside Ireland.

21. (*Head 27 of the draft bill*)

21.1 The EMI welcomes the introduction of the provisions in Head 27 that are designed to facilitate in a flexible manner the redenomination and renominalisation of outstanding debt issued by Ireland and of borrowings under facility agreements to which a State body is a party. The EMI notes that the method of redenomination to be applied to debt issued under Irish law and denominated in Irish pounds will be established by ministerial order. The EMI welcomes the fact that the method of redenomination used by private issuers must conform to the governing law of the debt.

21.2 Article 8(4) of the euro regulation, pursuant to which the provisions of Head 27 will be enacted, authorises each participating Member State to take measures during the transitional period which may be necessary in order to redenominate in "*the euro unit*" outstanding debt denominated in that Member State's "*national currency unit*". As stated in the preamble to the euro regulation, the euro unit and the national currency units are units of the same currency, the euro. All references in the provisions of Head 27 to the redenomination "*in euro*" or "*into*

*euro*” should therefore be replaced by references to the redenomination “*in the euro unit*” or “*into the euro unit*”, and all references to the redenomination of debt denominated “*in Irish pounds*” should be replaced by references to the redenomination of debt denominated “*in the Irish pound unit*”.

21.3 The second sentence of section 2 provides that if an issuer wishes to redenominate “*such debt instruments*” (i.e., instruments issued under Irish law and denominated in Irish pounds) in a manner not laid down in the ministerial order, the method of redenomination shall conform to the law governing the debt instruments in question. The EMI assumes that this provision intends to refer to all instruments denominated in Irish pounds, regardless of the law under which such instruments are issued.

21.4 Section 4 empowers the Minister for Finance to renominalise all or part of outstanding debt issued by or on behalf of Ireland. The EMI assumes that this provision is intended to apply to the renominalisation of debt upon its redenomination in the euro unit. The EMI also assumes that the terms ‘redenominate’ and ‘renominalise’ are intended to derive their distinctive meanings from Article 1 of the euro regulation, which provides that ‘redenominate’ shall mean changing the unit in which the amount of outstanding debt is stated from a national currency unit to the euro unit, but which does not have through the act of redenomination the effect of altering any other term of the debt. In view of the narrow meaning ascribed to redenomination, the EMI believes that it would be useful to include provisions in Head 27 regarding the methods of renominalisation which private issuers of debt denominated in the Irish pound unit should follow.

21.5 The EMI requests that it be consulted by the Department of Finance with respect to any ministerial orders containing draft legislative provisions relating to the redenomination of debt instruments governed by Irish law.

22. (*Heads 28 and 29 of the draft bill*)

The EMI welcomes the decision to introduce provisions simplifying the procedures for the redenomination and renominalisation of share capital. The EMI agrees that the existing procedure for such redenomination and renominalisation is too cumbersome, and welcomes the flexible approach followed which also seeks to protect the interests of shareholders. The EMI believes that the provisions of Heads 27, 28 and 29 will contribute to the integration of the capital markets in the euro area in the third stage.

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

8 May 1998.