

Legal Differentiation in the EU, Introduction of the Euro in EU Member States and Euroisation

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Structure of the Presentation

- **Legal Differentiation within the European Union and opt-outs**
- **Introduction of the euro in EU Member States**
- **Official use of the euro by non-EU countries and territories**

Legal Differentiation within the European Union - Background

**The European Union was established in
1958 (as European Economic
Community) by an international treaty
among 6 European countries.**

**By 2008, the Member States had
become 27.**

ENLARGEMENT OF THE EUROPEAN UNION



1952 Belgium
Germany
France
Italy
Luxembourg
Netherlands

1973 Denmark
Ireland
United Kingdom

1981 Greece

1986 Spain
Portugal

1995 Austria
Finland
Sweden

2004

Czech Rep.
Estonia
Cyprus
Latvia
Lithuania
Hungary
Malta
Poland
Slovenia
Slovakia

2007

Bulgaria
Romania



Legal Differentiation within the European Union - Background

- **Objective of the establishment of the EC:** by transferring certain specific competences to supranational institutions (Commission, Council, Parliament, Court), to decide and implement common economic policies.
- At the beginning of the 90's, Member States decided on **a step forward: a monetary union.** However, two Member States (UK, DK) could not agree. It was decided to go ahead but to allow them to “opt-out” of the Monetary Union.

Legal Differentiation within the European Union - Concept

- **Differentiated Integration:**

As an exception to the rule of Community law that Community policies apply equally to all Member States and all citizens, it is allowed in some specific fields that Member States integrate at different speed and in few very specific cases that Member States may even opt-out of a common policy.

[Cfr. Tuytschaever, *Differentiation in European Union Law*, Oxford 1999; Vigneron & Mollica, *La différenciation dans l'Union Économique et Monétaire*, Euredia 2000, p.197; J.-V. Louis, *Differentiation and EMU*, in *The Many Faces of Differentiation in EU Law*, Antwerp 2000.]

Legal Differentiation within the European Union - Concept

In Monetary Union:

- **Integration “au fur et à mesure” that Member States are economically ready to join according to the Maastricht Convergence Criteria. There is an obligation for each Member State to do its best to fulfil speedily these criteria**
- **Until they are ready, they are “Member State with a derogation”: some provisions do not apply to them**
- **In addition, exceptionally, the Treaty allows UK and DK to decide if and when they want to join the Monetary Union – no convergence report. For the time being, they have not decided to join and therefore they are in a position similar to the one of “Member State with a derogation”.**
- **There will be no other “opt-out” Member State. Since Maastricht, all new Member States join as “Member States with a derogation”.**

ECONOMIC AND MONETARY UNION (EMU)



-  EU Member States which have adopted the euro
-  EU Member States with a special status
-  EU Member States with a derogation



Legal Differentiation within the European Union – Consequences for the Eurosystem

- **Institutional: of the 3 ECB decision-making bodies:**
 - *Two (Governing Council and Executive Board) are the decision-making bodies only of the Eurosystem (ECB + participating NCBs)*
 - *One, the General Council, has as its members the Governors of all NCBs, including the ones “with a derogation”*
- **After the procedure for accession to the European Union, separate additional procedure for Member States moving from “outs” to “ins”, from MS with a derogation to participating MS**

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Introduction of the Euro – EU Procedure

- **TO ENTER THE EURO AREA:**
 - **On the basis of Article 121 (for the “first wave”) and Article 122.2 of the Treaty:**
 - **Decision of the Council, upon recommendation of the Commission on the basis of:**
 - **Report of the ECB**
 - **Report of the Commission**
 - **Opinion of the European Parliament**

Introduction of the Euro – EU Procedure

- **ECB CONVERGENCE REPORTS:**
 - **EMI Report “Progress towards Convergence” Nov 1995**
 - **EMI Convergence Reports:**
 - **1996 (15 Member States)**
 - **1998 (15 Member States)**
 - **ECB Convergence Reports**
 - **2000 (Greece)**
 - **2002 (Sweden)**
 - **2004 (11 Member States)**
 - **May 2006 (Lithuania + Slovenia)**
 - **Dec 2006 (9 Member States)**
 - **2007 (Cyprus & Malta)**
 - **2008 (10 Member States)**

[All Reports are available at

<http://www.ecb.int/pub/convergence/html/index/en.html>]

Introduction of the Euro – EU Procedure

- **ECB CONVERGENCE REPORTS:**
 - **Adopted by the General Council (Article 47.1, first indent of the Statute) as the “successor” of the EMI, i.e. with the participation of all the Governors**
 - **Compliance with 4 economic and 2 legal criteria is checked, plus some other elements (Article 121.1, last sentence, of the Treaty). The legal criteria are mainly:**
 - **(i) Compatibility of national legislation with the features of central bank independence and;**
 - **(ii) legal integration in the Eurosystem.**

Introduction of the €uro – Preparation for euro changeover

- Transfer of national powers to the supranational level at the moment of the adoption of the euro: all ECB legislation enters into force at the moment of the adoption of the euro
- Some adaptation of ECB legislation might be necessary:
 - **Monetary policy** (ex. transitional rules on the application of the minimum reserves regulation)
 - **Foreign reserve management** (ex. paying up of reserves to the ECB by the acceding central bank)
 - **Payment systems** (ex. exclusion of acceding NCB from TARGET2 agreement and entry into force of the TARGET guideline)
 - **Statistics** (ex. possible granting to acceding NCB of temporary derogation from certain statistical reporting obligations)

Introduction of the €uro – Preparation for euro changeover

Cooperation between the ECB and the NCB

- 1. Advice on legislation – [Cooperation with the acceding Member State]**
Review of draft national legal instruments under Article 105(4) of the Treaty and Article 2 of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions
- 2. Agreements on borrowing and frontloading euro banknotes** (and also issues related to the obligation to exchange the legacy currency banknotes against euro banknotes after the end of the changeover period or to the agreements on the transport of banknotes, etc.)
- 3. Verification of implementation: Assessment and verification of compliance in**
 - National payment systems and access to TARGET2
 - Monetary policy – compliance check on national documentation
 - Foreign reserve management – compliance check on national documentation
 - Statistics – compliance check on statistical data collection
- 4. Communication**
 - Comprehensive information campaign “Euro – our money”;
 - Exhibition of euro banknotes and coins, combined with an international conference;
 - Training anti-counterfeiting for cashiers, central bankers and law enforcement authorities

Introduction of the Euro – Preparation for euro changeover

- **Corporate Governance**
 - **Participation of acceding NCB in ESCB committees (first as observers)**
 - **Confidentiality agreements for the transitional period**
 - **Appointment of External Auditors (Article 27.1 of the Statute)**
 - **Amendment of (postponement of) voting modalities in the Governing Council**

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Official use of the €uro in Third Countries

- In this presentation, we are not dealing with the unilateral adoption of the euro by EU Member States: this would be in conflict with Community Law.
- In this presentation, we are not dealing with
 - the *de facto* use of the euro in third countries
 - the pegging of their currency to the euro
 - the inclusion of the euro in their basket of reference.

Official use of the €uro in Third Countries

- **Following an agreement under Article 111.3 of the Treaty**
- **On the basis of a Council decision under article 123(4) of the Treaty**
- **Unilateral euroisation, for historical reasons and without a legal basis in the Treaty.**

Cfr. “Monetary and exchange rate arrangements of the euro area with selected third countries and territories”, ECB Monthly Bulletin (Apr 2006), http://intranet.ecb.de/core/monpol/outlook/MoBu/files/foreign/foreign_article07.pdf

Official use of the €uro in Third Countries

- **Monetary Agreements between a third State and the European Community (Article 111.3)**
 - **Monaco (OJ L 142 of 31.5.2002, p.59)**
 - **S. Marino (OJ C 209 of 27.7.2001, p.1)**
 - **Vatican (OJ C 299 of 25.10.2001, p.1)**
 - **Andorra (under negotiation)**

Official use of the €uro in Third Countries

- **Decision of the Council of the European Union (based on Article 123.4) on the introduction of the euro in St-Pierre et Miquelon and Mayotte (OJ L 30 of 4.2.1999, p.29, cfr. also in OJ C 127 of 7.5.1999, p.5, the Opinion of the ECB on the draft)**

Official use of the €uro in Third Countries

“Unilateral Euroisation”: Montenegro and Kosovo

- **Specific situation after the Balkan war and secession of the States of the ex-Yugoslavia;**
- **Not a precedent;**
- **Problem in the future if and when they will apply for membership of the EU.**
- **Euroisation is not favoured, unless this is done through an agreement with the ECB**

[cfr. for Kosovo, the UN Resolution 1244; UNMIK Regulation No. 1999/4 of 2 September 1999 on the currency permitted to be used in Kosovo; UNMIK Administrative Direction No. 2001/24 of 21 December 2001]

Future Perspectives?

- **More EU Member States, as soon as they fulfill the convergence criteria, will adopt the euro...**
- **And its use in the world financial market is increasing....**
- **Euro has established itself today as one of the two most important currencies in the world**